

JUDICIAL CONDUCT BOARD OF PENNSYLVANIA

NEWSLETTER

No. 4 Fall 2014

Message from the Chair

In the summer and fall of 2014, allegations that some Pennsylvania judges sent or received pornographic emails pervaded the media. Bar associations, law professors, members of the media and the judiciary called for prompt action in dealing with this scandal, and specifically called for such action by the Judicial Conduct Board. It is evident that some who called for immediate action by the Board appear to have a fundamental misunderstanding of the Board, its role in relation to allegations of judicial misconduct, and how it functions. In this edition of the Newsletter, we feature an article by Board Chief Counsel Robert A. Graci and Deputy Counsel James P. Kleman, Jr., which discusses the Supreme Court's recent decision in the case of *In re Bruno* and the relationship between the Board's part in the constitutional two-tier disciplinary system and the Court's administrative and supervisory authority over the unified judicial system.

Those who criticize the Board's progress in investigations as being too slow fail to recognize the constitutional restrictions imposed on the Board. Unlike the Supreme Court's power articulated in *Bruno*, the Board has limited means available to it to respond to emergencies arising from a judicial officer's conduct. The Board may only request a judge's immediate suspension when the judge is charged by a criminal prosecutor with a felony or when the Board has already filed a complaint in the Court of Judicial Discipline. The Board cannot simply make pronouncements about a judicial officer's alleged misconduct. The Board is limited by the mandates of the Constitution.

These same constitutional limitations also prevent the Board from taking action during the investigative, pre-complaint, stage of proceedings. There is no mechanism available to the Board that would allow it to seek the suspension of a judge at that stage which, by constitutional mandate, is confidential. It is not empowered to issue public reports of its investigations before a finding of probable cause and the public filing of a Board complaint. Whenever the Board becomes aware of information that may require or permit the exercise of the Supreme Court's inherent supervisory power over the judiciary, the Board may file an appropriate notice with the Supreme Court ... and has done so when it believed such action was proper.

Some of those criticizing the Board have also decried the Board's processes for a lack of "transparency." The Board is always concerned with being transparent. However, the Constitution limits that transparency. Complaints filed with the Board are not public information; nor is investigative information. There are very limited circumstances in which the Board may comment upon an ongoing investigation, absent a waiver of confidentiality from an accused judge. That information only becomes public when relevant to a formal complaint filed by the Board in the Court of Judicial Discipline.

The Judicial Conduct Board carries out its constitutional role by acting independently as the Constitution requires and by doing what is right for the right reasons and not because of pressure from any source. It will be vigilant in maintaining that independence. Recent events have underscored the need for an impartial and confidential investigative process, lest the Commonwealth suffer even greater harm that would come from judges being tried and convicted in the least fair tribunal of all – the court of public opinion.

In addition, I call to your attention some other highlights of the past year, for Auld Lang Syne's sake. The Supreme Court of Pennsylvania issued new Canons of Judicial Conduct for both the judges and magisterial district judges this past year, changing both the format and scope of the rules governing judicial conduct. The Court also issued several opinions which further clarified this area of the law, in the matters of *In re Carney*, *In re Bruno* and *In re Solomon* (the companion to *Bruno* decided December 19, 2014), clarifying the Court's role and the role of both the Judicial Conduct Board and the Court of Judicial Discipline giving greater guidance as to what type and quantum of conduct merits the Court's exercise of its administrative/supervisory powers. Each of these cases adds to the jurisprudence in this area. In short it has been a very busy year with regard to judicial ethics.

As I have noted previously, I hope that the matters discussed in the Board's Newsletter are informative and helpful to you and that you will provide feedback to the information the Board provides.

With best personal and professional regards, and with best wishes for a Happy Holiday Season and a Healthy and Prosperous New Year, I am

Most respectfully,

Anne

Anne E. Lazarus

Chair, Judicial Conduct Board

MEET THE BOARD'S NEWEST MEMBER

On October 31, 2014, Governor Tom Corbett appointed Judge Christine Fizzano Cannon to the Judicial Conduct Board. As specified in the Constitution, she will serve as one of three members of the Board from the Pennsylvania judiciary. She is a member of the Republican Party and was appointed to a four-year term that will expire on October 31, 2018.

Judge Fizzano Cannon was elected to a ten-year term on the Delaware County Court of Common Pleas in November 2011. She is a graduate of the University of Arizona and the Widener University School of Law where she graduated with honors and served as the Articles Editor of the Law Review.

Judge Fizzano Cannon has a long history of service to Delaware County, its communities, and its charitable and civic organizations. Judge Fizzano Cannon served as a member of the Delaware County Council from 2008 to 2011 and was elected to serve as the Council's Vice Chairman in January 2010. She served from 1999 to 2007 on Middletown Township Council, having previously served on Middletown Township's Zoning Hearing Board.

Prior to becoming judge, Judge Fizzano Cannon was a Delaware County attorney from 1994-2011. She practiced primarily in the areas of commercial and contractual matters, municipal and municipal authority law, land use planning, and estate planning and administration. In addition to her private practice, she served as an Assistant County Solicitor and a Special Prosecutor of Child Support Enforcement in Delaware County. Particularly pertinent to her service on the Board was her appointment to the Governor's Judicial Advisory Committee and her appointment in 2004 by the Pennsylvania Supreme Court Disciplinary Board to the Pennsylvania Disciplinary Board Hearing Committee to hear cases and review files concerning attorneys accused of ethical lapses. She served in that capacity for more than six years.

Judge Fizzano Cannon is a member of the Delaware County Bar Association where she served two two-year terms on its Board of Directors. Among her many other civic and charitable endeavors are membership on the Board of Directors of the Riddle Memorial Hospital, Riddle Healthcare Foundation, the Board of Trustees of the Tyler Arboretum, and the Delaware County Women's Commission.

It is a pleasure to welcome Judge Fizzano Cannon to the Board.

UPCOMING NEWSLETTER SECTION

With the Supreme Court's adoption in 2014 of a new Code of Judicial Conduct (generally effective July 1, 2014) and new Rules Governing Standards of Conduct of Magisterial District Judges (effective December 1, 2014), a number of questions concerning the reach of the new provisions and their interpretation have arisen. Many of the provisions found in the newly adopted Code and Rules had existed in the prior versions. The interpretations given those provisions will inform the application of their counterparts in the new versions. For some questions resulting from newly minted provisions, there are no easy answers. Experience will, no doubt, have an impact on the proper application and interpretation of these sections. This was recognized by the Supreme Court in adopting a new comment to Rule 2.11(A)(4) relating to possible recusal or disqualification based on large contributions to a judge's campaign by lawyers, law firms and litigants and the related question of contributions to independent political action committees or "PACs." There the Court said: "Rulemaking, in this regard, would require further study and deliberation in order to appropriately balance all respective interests involved. Thus, the Court has reserved any treatment to a later time."

This will undoubtedly be true of other areas, as well. Because of the newness of many of these provisions, and in an attempt to be fair in the interpretation and application of these new provisions, the Board invites anyone subject to the Code or Rules to pose any questions about them to Board staff through our "ContactUs" portal (ContactUs@jcbpa.org). In subsequent Newsletters, staff will try to answer the questions that are received.

It is appropriate to note, as well, that in adopting the new Code and Rules, the Supreme Court continued the designation of the Ethics Committee of the Pennsylvania Conference of State Trial Judges and the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania as the approved bodies to render advisory opinions regarding ethical concerns involving judges, magisterial district judges and judicial candidates subject to the Code and the Rules. Although opinions by these respective committees are not, *per se*, binding upon the Board, the Court of Judicial Discipline or the Supreme Court, action taken in reliance on their opinions must be taken into account in determining whether discipline should be recommended by the Board or imposed by the Court. Any judicial officer or candidate for judicial office is well advised to seek an opinion from the appropriate committee if there is any question as to the propriety of any anticipated action as this provides a level protection that is not otherwise generally available.

We look forward to your inquiries and hope that our dialogue will assist in a better understanding of the new Code and Rules.

THE JUDICIAL DISCIPLINE SYSTEM IN PENNSYLVANIA: MOVING FORWARD AFTER *BRUNO*

By

Robert A. Graci, Chief Counsel, and James P. Kleman, Jr., Deputy Counsel,
Judicial Conduct Board

“Act well your part; there all the honour lies.”¹

Published first in 1734, Alexander Pope’s succinct advice applies in many contexts, but the difficulty in putting it to practice often comes in discerning the parameters of the role that one is to play. This is no less true in Pennsylvania’s judicial discipline system.

The Supreme Court’s recent decision in a case involving the interim suspension of a magisterial district judge charged with federal felonies² has resulted in what some consider confusion of the roles of the players in that disciplinary system. This article will analyze that decision in an attempt to rationalize the Commonwealth’s judicial disciplinary process and explain the respective roles of the players in that process.

A plain reading of Article V of the Pennsylvania Constitution, as amended in 1993, indicates that the judicial discipline system in Pennsylvania is comprised of the following three actors: (1) the Judicial Conduct Board (the Board), which investigates and prosecutes judicial misconduct;³ (2) the Court of Judicial Discipline (the CJD), which is the trial court for the cases that the Board presents;⁴ and (3) the Supreme Court of Pennsylvania, which, in most cases, is the court of appeal for decisions of the CJD.⁵

The Board is a constitutionally created independent board within the Judicial Branch of the Commonwealth’s government.⁶ The Constitution requires the Board

¹ *An Essay on Man*, Alexander Pope, Epistle IV, p. 34, *Pennsylvania State University Electronic Classics Series*, ed. Jim Manis.

² *In re Bruno*, 101 A.3d 635 (Pa. 2014).

³ Pa. Const., art. V, §§ 18(a), 18(a)(7).

⁴ Pa. Const., art. V, §§ 18(b), 18(b)(5).

⁵ Pa. Const., art. V, §§ 18(c)(1) (right of justice, judge, or justice of the peace [now “magisterial district judge”] to appeal CJD final adverse order of discipline), 18(c)(3) (right of Board to appeal CJD decision to dismiss Board complaint).

⁶ **See** Pa.Const., art. V, § 18(a). *See also* The Honorable Ronald D. Castille, Foreword: A Period of Restoration and Reform, 67 TEMP. L. REV. 509, 510 (1994) (“These new bodies

to receive and investigate complaints regarding judicial misconduct filed by individuals, and it may initiate investigations on its own.⁷ It is up to the Board, after investigation, to determine whether there is probable cause to file formal charges against a member of the Commonwealth's judiciary.⁸ A justice, judge or magisterial district judge who is the subject of a complaint filed with or initiated by the Board, or of an investigation conducted by the Board, must be told of the nature and content of the complaint and given an opportunity to respond fully to the complaint before the Board makes any probable cause determination.⁹

If a majority of the 12-member Board decides to file charges against a judge, it directs its Chief Counsel to file a complaint in the Court of Judicial Discipline. The legal staff of the Board, led by the Chief Counsel, then prosecutes the case in the CJD. There, the Board has the burden of proving the charges against the accused judge (who at that time is presumed innocent) by clear and convincing evidence.¹⁰ If the charges are proven, it is then up to the CJD to decide the sanction to be imposed.¹¹ As stated above, after sanction is imposed or after a Board complaint is dismissed, either the sanctioned judge or the Board may appeal to the Supreme Court, which, in most cases, is the direct appellate court from decisions of the CJD.¹² The limited parameters for appellate review of CJD decisions exercised by the Supreme Court (or the Special Tribunal acting in its stead) are set forth with specificity in the Constitution.¹³

Recently, in *In re Bruno*,¹⁴ the Supreme Court took the opportunity to consider what effect, if any, the 1993 amendments to Article V of the Pennsylvania

[the Board and the CJD], unlike the [Judicial Inquiry and Review Board], are intended to be independent and not under the direct supervision of the Supreme Court.”).

⁷ **See** Pa. Const., art. V, § 18(a)(7); **see also** JCBRP 25(A)(2) (Chief Counsel may initiate written complaint based on information received).

⁸ **See** Pa. Const., art. V, § 18(a)(7).

⁹ **See** Pa. Const., art. V, § 18(a)(8); **see also** JCBRP 30(B) (regarding notice of full investigation).

¹⁰ **See** Pa. Const., art. V, §§ 18(a)(7), 18(b)(5).

¹¹ **See** Pa. Const., art. V, § 18(b)(5).

¹² **See** Pa. Const., art. V, § 18(c)(1). In appeals from CJD cases involving a Supreme Court justice, the Constitution requires the appellate court to be a special tribunal chosen by lot of Superior and Commonwealth Court judges, who do not serve on either the Board or the Court.

¹³ **See** Pa. Const., art. V, § 18(c)(2).

¹⁴ **See Bruno**, 101 A.3d at 641.

Constitution that created the Board and the CJD had on the Supreme Court's general supervisory and administrative authority over all other courts as set forth in the 1968 Pennsylvania Constitution¹⁵ and on its general "King's Bench" authority.¹⁶ The Supreme Court's decision in **Bruno**, which the Court clearly intended as being an exposition upon authority that it already possessed at King's Bench, *i.e.*, to suspend a judge accused of misconduct, also had the effect of removing any lingering doubt as to whether the Court could be (or would be) an actor in judicial misconduct matters at their inception, as opposed to maintaining a role limited merely to the appellate review contemplated by the 1993 amendments to Article V.¹⁷

As made plain by the Court in **Bruno**, its King's Bench authority predated the 1968 Constitution and, despite amendment, the Court held that it exercised the same power after the ratification of the 1968 Constitution as it did before, whether its powers were enumerated in the Constitution or held residually.¹⁸ When speaking of its general King's Bench power post-1968, the Court observed that the provisions of the 1968 Constitution and Judicial Code that support the exercise of the general power are cast in terms of the Court retaining the powers that had been bestowed upon it in ancient times, not upon granting a newly-articulated authority given by the people at the time of the ratification of the 1968 Constitution.¹⁹

In clear and unambiguous terms, the Supreme Court opined that:

[b]y creating a regularly convened apparatus to investigate, prosecute, and adjudicate formal matters involving allegations of judicial wrongdoing, Article V, Section 18 did not impair the Supreme Court's supervisory powers over personnel of the Unified Judicial System, including judicial officers, although it certainly reduced the occasion for the use of these powers to extraordinary circumstances. In the regular course of its business, the Judicial Conduct Board receives and investigates complaints of judicial conduct, and may initiate proceedings against Pennsylvania jurists. The CJD adjudicates

¹⁵ **See** Pa. Const., art. V, § 10(a).

¹⁶ **See, e.g., Bruno**, 101 A.3d at 676-77 (citations omitted).

¹⁷ **See, id.**, at 683-87 (citations omitted).

¹⁸ **See id.**, at 666-68 (citation omitted).

¹⁹ **See id.**, at 676 ("It bears reiteration that the Court's King's Bench authority and jurisdiction encompass, supplement, and transcend the other powers and jurisdiction enumerated in the 1968 Constitution and Judicial Code. As a corollary, the Supreme Court is neither divested of its King's Bench powers, nor is the supreme and general nature of these inherent powers limited, unless the divestiture or limitation is clearly expressed or necessarily implied in the Constitution.").

those complaints. We have no doubt that the diligent operation of the Board and the CJD over the last twenty years has contributed significantly to maintaining high standards of integrity and professionalism for judicial officers in Pennsylvania. This two-tiered disciplinary process also has the advantage of preserving the resources of the Supreme Court, which otherwise would have been obliged to act in every case of judicial wrongdoing pursuant to its supervisory powers. Nevertheless, the existence of the Article V, Section 18 disciplinary process does not encompass and exhaust the Supreme Court's duty to the citizens nor does it discount the Court's authority to act to discharge those obligations.²⁰

Primarily, the type of action contemplated by the Supreme Court majority in **Bruno** to discharge its duty was the interim suspension of a jurist accused of felonies,²¹ which was the factual predicate for the **Bruno** case.²² The Court found that its Article V, § 10 supervisory authority and its general King's Bench authority and jurisdiction²³ conferred upon it the authority to temporarily suspend judges accused of misconduct in the first instance.²⁴ Thus, the Court held that, while the discipline procedure set forth in the 1993 amendments to Article V, § 18 would, in the majority of circumstances, adequately respond to punitive concerns and the necessities of protecting the integrity of the unified judicial system, the Court, nonetheless, had and continues to have the authority to act swiftly to vindicate its responsibilities²⁵ to the citizenry of Pennsylvania in extraordinary circumstances that implicate judicial misconduct.²⁶

²⁰ *Id.* at 682 (citations omitted).

²¹ *Id.*, at 640-41.

²² The magisterial district judge in **Bruno** was accused by federal indictment of committing felony criminal conspiracy, wire fraud, and mail fraud following its investigation into alleged corruption in the Philadelphia Traffic Court, where he occasionally sat as a judge by temporary assignment. **Bruno**, 101 A.3d at 641-42. Ultimately, the magisterial district judge was acquitted of the charges following a jury trial. *Id.*, at 643.

²³ The Court found that its power to supervise judicial personnel and lower tribunals codified in Article V, § 10 of the 1968 Pennsylvania Constitution was, in fact, an express articulation of authority that it always had at King's Bench. **See Bruno**, 101 A.3d at 678-79 (citations omitted).

²⁴ *Id.*, at 677-79.

²⁵ In necessarily broad terms, the Supreme Court defined these responsibilities as "its general powers of adjudication, supervision, and administration" and "the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King's Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722." **See Bruno**, 101 A.3d at 644-45 (citations omitted).

The Court recognized that when taking action against an accused jurist in such an extraordinary circumstance, its discretion to act is subject to a balancing of its responsibility to maintain the fairness and probity of the judicial process with the countervailing consideration of due process and fairness concerns regarding the accused judge.²⁷ However, in such extraordinary circumstances, the Court found, whatever private rights a judge may have in deciding cases and receiving compensation may have to yield to the public's interest in the Court's enforcement of its institutional prerogative to maintain the fairness and probity of the judicial system.²⁸ The Court left for another day the decision of what circumstances would be "extraordinary" enough to warrant the Court to inject itself into a case of judicial misconduct in the first instance.²⁹

Despite the Court's preference not to define an "extraordinary circumstance" that would justify its involvement at the inception of a judicial misconduct matter *via* its King's Bench and supervisory authority, it appears reasonably clear from the facts underlying **Bruno** and the prior cases discussed in **Bruno** what types of "extraordinary circumstances" that would stir the Court to act.

To explain, the underlying controversy in the **Bruno** case resulted from the interim suspension issued against a magisterial district judge by the Supreme Court which flowed from felony criminal charges being filed by the federal government against practically all the sitting judges of Philadelphia Traffic Court and several judges specially assigned to Traffic Court.³⁰ The Court explained that it acted *sua sponte* and elected not to rely on the constitutionally-dictated two-tiered disciplinary process due to "the exigencies of the cases – viewed in the context of the widespread corruption in the Traffic Court – and the uncertainty of whether the CJD would act and in what manner, impressed upon the Court the necessity to proceed swiftly."³¹ Earlier in the **Bruno** opinion, the Court discussed a number of matters in which it exercised its King's Bench power to act swiftly to safeguard the proper administration of justice in the Commonwealth.³² Most notable among the Court's discussion of these matters was its recounting of its response to the scandal

²⁶ *Id.*, at 682-83 (citations omitted).

²⁷ *Id.*, at 683-84 (citations omitted).

²⁸ *Id.*, at 684 (citations omitted).

²⁹ *Id.*, at 683 (citations omitted).

³⁰ *Id.*, at 641-42, and at 641, FN1.

³¹ *Id.*, at 687, and at 687, FN 31.

³² *Id.*, at 671-75 (citations omitted).

wrought by former Judges Michael T. Conahan and Mark A. Ciavarella of Luzerne County, when it was revealed that the judges' illegal conduct also called into question the legitimacy of their prior adjudications, specifically Ciavarella's juvenile adjudications.³³ The Court's view of the facts leading to its action in **Bruno** and its action in the prior cases recounted in the **Bruno** opinion indicates strongly that the Court will act in cases where the alleged judicial misconduct reaches such an extent that it threatens the systemic integrity and probity of the judicial process itself, as opposed to isolated, though nonetheless serious, cases of judicial misconduct.

Nevertheless, regardless of whether the Supreme Court concludes that it must act in a judicial misconduct matter due to a perceived emergent need, the disciplinary apparatus created in 1993 – the Board, the investigative and prosecutorial body for matters of judicial misconduct, and the CJD, the constitutionally-appointed adjudicative body – must continue to work as originally envisioned. This is because, although an accused judge's right to function as a judge must, in some cases, yield to the interests of the public, an accused judge does not surrender the right to due process merely because the office of judge is held in trust for the public.³⁴ The framers of the 1993 amendments recognized this fact, and, as such, they put the Board to the burden of notifying judges of the allegations against them and requiring an opportunity to respond *prior* to the filing of charges in the CJD.³⁵ If it charges in the CJD, the Board has the burden of proving allegations against an accused jurist by clear and convincing evidence, and the CJD must conduct any trial in a manner that comports with traditional notions of due process.³⁶ Thus, the Constitution removes any doubt as to what "process" is "due" to a judge accused of misconduct in proceedings initiated by the Board in the CJD.

³³ *Id.*, at 671-73 (citations omitted).

³⁴ *Cf. Bruno*, 101 A.3d at 680 (the 1993 amendment "abolished the disciplinary process by which the Supreme Court imposed judicial discipline in cases brought to [it] upon the recommendation of the [Judicial Inquiry and Review Board]. Section 18 now describes a 'self-contained system for the investigation, prosecution, and imposition of discipline in cases of judicial wrongdoing.' The initial adjudicatory authority in disciplinary matters under the new scheme is the CJD. The CJD is a court of record of limited scope – an appointed tribunal within the judicial system whose functions are deliberately enumerated. As a general rule, jurists have the right to appeal an adverse decision of the CJD to the Supreme Court. The provision also seeks to ensure basic conditions of fairness in the adjudication of formal disciplinary grievances lodged against jurists. That the 1993 amendment transformed the disciplinary apparatus and process in Pennsylvania is beyond dispute.") (internal citations omitted).

³⁵ *See* Pa. Const., art. V, § 18(a)(8).

³⁶ *See* Pa. Const., art. V, § 18(b)(5).

Bruno, if read to its broadest extent, also suggests that the Supreme Court retains the power to *discipline* an accused judge in addition to its power to enter an interim suspension of an accused judge on an emergency basis.³⁷ Although the **Bruno** Court did not request briefing or argument on the general issue of whether it could sanction a sitting jurist,³⁸ the Court held that “[a]cting within their respective authorities and jurisdictions, both the Supreme Court and the CJD have authority to issue orders of interim suspension **and to impose sanctions** upon jurists.”³⁹

The Supreme Court’s discussion of its disciplinary authority in **Bruno** can be expressed best by the following syllogism: (1) the Supreme Court, at King’s Bench, had the power to discipline a sitting jurist; (2) the Supreme Court, despite the 1993 amendments to the Constitution, retains all of the powers guaranteed to it at King’s Bench by the 1968 Constitution; (3) therefore, the Supreme Court has the authority to discipline judges, despite the disciplinary apparatus set forth by the 1993 amendments.⁴⁰ Pointedly, the **Bruno** Court concluded that, at King’s Bench, it has the power to “sanction” a judge “as a supervisory matter, and as the power to keep inferior tribunals within the bounds of their authority.”⁴¹ Curiously, however, in its analysis of whether its authority at King’s Bench gave it the power to suspend a sitting jurist on an interim basis, the Court dismissed the notion that an abstract consideration of whether its acts could be viewed as disciplinary versus supervisory precluded it from acting to suspend a jurist. The Court noted that the categorization of its actions as “disciplinary” versus “supervisory/administrative” created a “false dichotomy” that was not a proper ground upon which to base its exercise of its power to suspend.⁴² Rather, the proper focus was whether it had the constitutional authority at King’s Bench to act.⁴³

³⁷ *See, e.g., Bruno*, 101 A.3d at 679 (exercise of King’s Bench power by Supreme Court does not preclude imposing punishment on judges).

³⁸ *See, e.g., id.*, at 642 (“The Court requested briefing and argument on three constitutional issues. The issues briefed are: (1) Whether the Pennsylvania Supreme Court has jurisdiction to enter orders of interim suspension of jurists[;] (2) Whether the [CJD] has exclusive jurisdiction to enter orders of interim suspension of jurists, or whether the [CJD’s] jurisdiction is concurrent with the jurisdiction of the Pennsylvania Supreme Court[;] (3) If both tribunals act, which order is supreme.”).

³⁹ *Id.*, at 641 (emphasis added).

⁴⁰ *Id.*, at 677-682 (citations omitted).

⁴¹ *Id.*, at 688 (citations omitted).

⁴² *Id.*, at 678.

⁴³ *Id.*

Some reading **Bruno** may be tempted to cast doubt upon the Court's expression of its authority to sanction a jurist in the first instance as mere "*obiter dicta*," unmoored from the central issue briefed in the case, *i.e.*, its power to issue interim suspensions. However, several post-1993 amendment cases, most notably ***In re Assignment of McFalls***,⁴⁴ indicate that the Court is not adverse to imposing sanctions in the first instance against judges either parallel to or prior to the Board's involvement in the same matter. Indeed, while the Supreme Court had not characterized any of the orders it has entered in post-1993 amendment misconduct cases as "disciplining" a sitting jurist as that term is commonly used in the judicial discipline section of the Constitution,⁴⁵ its suspension order decisions in ***In re Assignment of Avellino***,⁴⁶ ***In re Assignment of McFalls***, ***In re Merlo***,⁴⁷ and ***Bruno*** itself, delineate the process that the Supreme Court would employ if it were to discipline a judicial officer. Basically, this process entails the following: (1) the Supreme Court receives an allegation of judicial misconduct; (2) it enters an order that addresses the issue; (3) the judicial officer subject to the order has the ability to challenge it in the Supreme Court; (4) if challenged, the matter may be considered by the Supreme Court itself or referred to a special master for fact-finding and a recommended order; and (5) the Supreme Court enters a final order.⁴⁸

Ultimately, however, regardless of how the Court characterizes future sanction orders (either as "disciplinary" or "supervisory") and whatever process it may employ to engage in fact-finding about judicial misconduct and, thereafter, to sanction a judge, it has recognized that its actions are entirely separate from and

⁴⁴ ***See id.***, 795 A.2d 367 (Pa. 2002).

⁴⁵ ***See*** Pa.Const., art. V, § 18(d)(1).

⁴⁶ ***See id.***, 690 A.2d 1138 (Pa. 1997).

⁴⁷ ***See id.***, 17 A.3d 869 (Pa. 2011).

⁴⁸ ***See, e.g., McFalls***, 795 A.2d at 368-69; ***see also In re Solomon***, 66 A.3d 764 (Pa. 2013), *vacated by* ___ A.3d ___, 2014 WL 7269830 (Pa. 2014). The ***Solomon*** case was briefed and argued along with ***Bruno***. ***Solomon*** raised similar, though distinct, issues stemming from the Traffic Court affair regarding the Supreme Court's authority to suspend a sitting judge as a result of the judge's alleged refusal to cooperate with a Court-ordered administrative review of the Traffic Court. The judge in ***Solomon*** was subject to a rule issued by the Supreme Court directing her to show cause why she should not be suspended for 90 days without pay for her refusal. ***See In re Solomon***, 62 EM 2013 (Pa. 2013), *vacated by* ___ A.3d ___, 2014 WL 7269830 (Pa. 2014). The judge responded to the rule, and the Supreme Court appointed a master to conduct a hearing and make findings of fact and conclusions of law. ***Solomon***, 66 A.3d at 764-65. Ultimately, the Supreme Court discharged its rule to show cause and vacated its prior orders in that case because, as had been revealed publicly after the judge waived confidentiality, the Board had conducted a parallel investigation of the judge for the same conduct and dismissed the matter with a Letter of Caution. ***See, e.g., In re Solomon***, ___ A.3d ___, 2014 WL 7269830 (Pa. 2014).

collateral to Board proceedings or Board-initiated proceedings in the CJD.⁴⁹ While it may refer matters to the Board for investigation, the Supreme Court has no authority to direct the Board to initiate an investigation or to take any other action in the performance of the Board's independent constitutional mandate.⁵⁰

The decision in **Bruno** makes clear that the 1993 amendments to Article V, section 18 did not eliminate the Supreme Court's inherent authority over the judiciary. It likewise makes clear that the Board's authority is in no way diminished by the Court's authority. The Board will act independently as the Constitution directs when the circumstances warrant. That is what the Constitution ... and **Bruno** ... demands.

⁴⁹ **See, e.g., Bruno**, 101 A.3d at 688 ("As we have explained at length, supervisory actions of the Supreme Court and disciplinary proceedings prosecuted by the Board and adjudicated by the CJD are distinct. The Supreme Court and the CJD have constitutional authority to *investigate a jurist and order sanctions*, if warranted, where the legal predicates for their respective actions are met." (emphasis added); **see also Avellino**, 690 A.2d at 1143 n. 6 ("Conversely, of course, action by this Court pursuant to our supervisory power in no way affects the independent authority of [the Board] to investigate the same conduct for purposes of disciplinary action pursuant to Article V, Section 18."); **see also McFalls**, 795 A.2d at 368 (referring matter to Board despite entry of order of suspension for 30 days against accused jurist).

⁵⁰ **Avellino**, 690 A.2d at 1143 n. 6; **McFalls**, 795 A.2d at 368 (referring matter to Board). *See also* The Honorable Ronald D. Castille, Foreword: A Period of Restoration and Reform, 67 TEMP. L. REV. 509, 510 (1994) ("These new bodies [the Board and the CJD], unlike the [Judicial Inquiry and Review Board], are intended to be *independent* and *not under the direct supervision of the Supreme Court.*")(emphasis added); and *compare id.* at 512 ("Although the [1993] amendment specifically states that the Board will be *independent*, it still places the Board and the [Court of Judicial Discipline] within the "Judicial Branch" of government.") (emphasis added).