

# Judicial Conduct Board Operating Procedures

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# Judicial Conduct Board Operating Procedures

## **I. INTRODUCTION**

These Operating Procedures ("OPs") are a compendium of the policies, practices and procedures in effect at the Pennsylvania Judicial Conduct Board ("JCB" or "Board"). These OPs are by definition a description of the mechanism by which the JCB implements its policies, practices, procedures, and rules, and may be modified at any time by the JCB.

Failure to adhere to a particular policy, practice or procedure will not alter the rights afforded to any person involved in JCB investigations or proceedings and shall not affect the validity of any investigation or other activity carried out by the JCB or its staff.

Moreover, these OPs do not constitute legal advice, do not have the force of law and do not confer any substantive or procedural due process rights upon any person or entity including the JCB or its staff, complainants, respondent judges or anyone else dealing directly or indirectly, formally or informally, with the JCB. These OPs are meant to describe the method and structure by which the policies, practices, procedures, and rules of the JCB are put into effect. The Constitution of the Commonwealth of Pennsylvania, the Code Judicial Conduct ("Code), the Rules Governing Standards of Conduct of Magisterial District Judges ("Rules"), Judicial Conduct Board Rules of Procedure, Judicial Conduct Board Member's Conduct Rules, and the relevant statutory and decisional law remain the authoritative, controlling law.

## **CHAPTER ONE – GENERAL PROVISIONS**

### **OP 1.01 – AUTHORITY OF THE JUDICIAL CONDUCT BOARD**

The Constitution of the Commonwealth of Pennsylvania and relevant statutory and decisional law empower the Board to act in matters of judicial conduct. This authority to act shall be exercised exclusively by the Board operating as a Committee of the whole, except that specified matters of a purely supervisory or ministerial nature may be delegated by the Board by resolution to the Chair, Vice-Chair, Chief Counsel or to a Committee of the Board. Absent any such specific delegation, the responsibility shall reside exclusively with the Board.

## **OP 1.02 – APPLICABILITY OF ROBERT'S RULES OF ORDER**

The rules contained in the current edition of Robert's Rules of Order, newly revised, shall govern the Board in all of its meetings, except and unless these OPs specifically provide to the contrary or the Board as a committee of the whole elects to proceed otherwise.

## **CHAPTER TWO – THE JUDICIAL CONDUCT BOARD AND CHIEF COUNSEL**

### **PART ONE: The Board**

#### **OP 2.01 – BOARD MEETINGS**

Unless otherwise set, the Board shall meet in-person at least six times per year, on the first Monday of every other month, beginning in the month of February. Unless otherwise directed by the Chair, or unless changed by the Board, the meetings shall take place at the JCB headquarters in Harrisburg. The time of the meeting shall be set by the Chair. All other meetings may be held with members participating by teleconference and/or videoconference.

The Chair, with the assistance of Chief Counsel, shall set the meeting agenda and determine the order in which board business is addressed. At the Board's discretion, the Board may meet in executive session prior to, or during, a scheduled meeting.

Between regularly scheduled in-person meetings, the Board may hold meetings by teleconference to address its customary business agenda. This practice is especially encouraged to address requests for Dismissals After Preliminary Inquiry ("DAPI") or Strictly Legal Error Dismissals ("SLED"). In the absence of objections, electronic communications shall be available to the Chair or Chief Counsel to conduct the business of the Board.

#### **OP 2.02 – ORGANIZATIONAL MEETING**

At its February meeting each year, the Board shall organize itself for the business of the calendar year and shall elect members to serve as Chair, Vice-Chair and Secretary ("Executive Committee"). In November or December of the year prior to the calendar year in which the Board holds its organizational meeting, the incumbent Chair shall appoint a nominating committee consisting of at least three (3) Board members

whose responsibility shall be to accept nominations of those willing to serve on the Executive Committee and to present one or more candidates for each position for consideration by the Board. Those persons nominated and willing to serve shall be made known to the Board members in advance of the February meeting. At the February meeting, the Board will vote to elect the Executive Committee for the upcoming year. The newly elected Chair will appoint members to serve on standing committees or then existing ad hoc committees and designate their respective Chairs.

### **OP 2.03 – EXECUTIVE COMMITTEE**

A. The Executive Committee shall be composed of a Chair, Vice Chair, and Secretary as follows:

Chair. The prerogatives and duties of the Chair shall be those (a) set forth in the Authority of the Judicial Conduct Board (OP 1.01), (b) referenced in these OPs, (c) specifically delegated by the Board, or (d) contained in Roberts Rules of Order.

Vice Chair. Whenever the Chair is absent or unable to act, those prerogatives and duties shall be assumed by the Vice Chair.

Secretary. The prerogatives and duties of the Secretary shall be to supervise the taking of the minutes of meetings of the Board and, after being approved by the Board, certifying that such minutes are accurate and complete.

B. In the event it becomes necessary for the Board to act immediately on a matter and before a regularly scheduled meeting or special meeting of the Board can be convened, the Executive Committee shall have the authority to act for the Board. As soon as practicable, the Executive Committee shall report any such action taken under this provision to the entire Board for review with a request to ratify the action.

C. In the event the Executive Committee, or any member of the Executive Committee, takes action that is beyond the authorized scope of powers, such action shall be deemed ultra vires, invalid, and of no effect.

### **OP 2.04 – COMMITTEE VACANCIES**

In the event a board member on the Executive Committee resigns his or her position or is unable to continue such service, the Board shall at

its next regularly scheduled meeting accept nominations from the Board for the vacant position and vote to elect a member to fill the vacancy. For vacancies on other committees, the Chair shall appoint Board members willing to serve to fill such vacancies.

## **OP 2.05 – OTHER COMMITTEES**

The Chair shall recommend for approval by the Board such committees, standing or ad hoc, as shall be necessary to facilitate the business of the Board. The initial Standing Committees shall consist of the Personnel Committee ("Personnel Committee") and the Budget Committee ("Budget Committee"). The Chair shall designate the Chair of each committee and also shall serve as an ex officio member of each committee.

- A. **Personnel Committee.** The Chair shall appoint at least three (3) Board members willing to serve as members of the Personnel Committee and designate one member to serve as Chair. The Personnel Committee shall serve as the liaison between the JCB and its staff to supervise the implementation of the "Personnel Policies of the Judicial Conduct Board" adopted March 2004, as amended or restated from time to time. JCB staff may bring to the attention of the Personnel Committee any issues, grievances, or other matters pertaining to the staff and the operation of the Board. The Personnel Committee shall report to the Board the status of any matters pending, involving, or affecting the JCB staff.
  
- B. **Budget Committee.** The Chair shall appoint at least three (3) Board members willing to serve as members of the Budget Committee and designate one member to serve as Chair. The Budget Committee shall provide guidance to the Board and Chief Counsel as necessary for budget development and budget requests submitted to the Governor and the General Assembly for each fiscal year.

## **OP 2.06 – ORDER OF BUSINESS**

The Chief Counsel, upon consultation with the Chair, shall prepare the agenda for each meeting of the Board. Board members may offer suggestions to the Chair of matters to be included on the agenda.

Chief Counsel and staff counsel are expected to attend meetings of the Board, unless otherwise excused. Chief Counsel or staff counsel may be excused from Executive Session or if otherwise directed by the Chair for good cause.

The Board adopts the following as its Standard Order of Business, provided that the order of business may be altered at any time at the Chair's discretion, or at the request of a majority of the Board members present, in order to more efficiently carry out the Board's business:

A. Executive Session

B. Business Agenda

1. Call to Order
2. Roll Call
3. Revisions or Additions to the Agenda
4. Approval of Minutes of Previous Meeting
5. Reports of Committees
6. Review of Requests for Authorization to Conduct Full Investigation ("NOFI")
7. Review of Requests for Disposition After Full Investigation
8. Review of Requests for Dismissal after Preliminary Inquiry ("DAPI")
9. Review of Requests for Strictly Legal Error Dismissal ("SLED")
10. Review of Requests for Dismissals Based on Lack of Jurisdiction
11. Review of Anonymous Complaints
12. Review of Referrals, Stays and Tabled Matters
13. Review of Post-NOFI List
14. Review of Litigation Update
15. Chief Counsel's Administrative Report
16. Status Reports
17. Informational Items
18. Adjournment

## **OP 2.07 – VOTING**

When a Board member cannot be present for a scheduled meeting, or, excepting non-participation based on recusal from a matter, must leave during the course of a scheduled meeting, the Board member may assign his or her vote by proxy to another Board member with

any instruction on how he or she wishes his or her vote to be cast on particular agenda items. If the Board member cannot be present, the vote assignment must be made in writing in advance of the scheduled meeting with a copy provided to the Chair. If the Board member must leave during the course of a scheduled meeting, the Board member may make the vote assignment verbally at the meeting before the member leaves.

When authorized by the Chair, and when unable to participate in-person, by teleconference, or videoconference at a board meeting, board members may review and consider any particular matter of board business, and cast his or her vote regarding its disposition, by electronic communication via text, email, or telephone call.

A tie vote will result in non-action.

### **OP 2.08 – MINUTES OF MEETINGS**

All meetings of the Board shall be electronically recorded, and such recordings shall be used by staff, under the supervision of the Board Secretary, to aid in the preparation of written minutes. The draft minutes of the preceding meeting shall be presented for approval at the next regularly scheduled meeting of the Board. Following approval, the Board Secretary shall certify to the accuracy and completeness of the minutes. After the minutes for a meeting are approved by the Board and certified by the Board Secretary, all electronic, audio, video, or visual recordings made of the board meeting shall be destroyed within 24 hours. For other board committees, such as personnel or budget, meeting minutes shall be maintained at the option of each respective Committee Chair.

### **OP 2.09 – RECUSAL AND DISQUALIFICATION**

Rule 8 of the Judicial Conduct Board Member's Conduct Rules specifies the events and circumstances requiring recusal or disqualification.

Members of the Board must police themselves against actual and potential conflicts in the discharge of their proscribed duties. In circumstances warranting recusal or involving an actual conflict of interest, the recusing Board member must immediately discontinue any involvement in the matter by leaving the meeting for the duration of the discussion and vote on the matter. The Board member shall not discuss the issue with other members or staff.

The import of recusal or disqualification:

- A. After a Board member has recused or disqualified from a matter, the recusing Board member may not participate in its consideration, shall not have access to the investigative file, shall not thereafter receive any of the staff reports, and must physically leave the meeting room or disconnect from a teleconference prior to the Board discussing and voting on the matter.
- B. Recusal requires that a Board member not
- participate in board discussions and deliberations
  - make recommendations
  - give advice
  - participate in any manner
  - or in any way assume responsibility for any aspect of the investigation or deliberative process
- C. Consistent with the Constitution and the Board's rules, should the Board conclude that public disclosure of a Board member's recusal or disqualification from a particular matter is necessary to protect the integrity of the system of judicial discipline in the Commonwealth of Pennsylvania, the Board may so authorize.

Amended April 4, 2016, imd., effective, to add Section C.

## **OP 2.10 – STAFF PERFORMANCE EVALUATIONS**

### A. Performance Evaluation Objectives

It is the policy of the Board to regularly evaluate the work performance of its staff in order to properly assess each staff person's performance and professional development and to allow staff the opportunity to receive information from their supervisors regarding their job performance.

A performance evaluation will not necessarily result in a change in pay or job duties.

### B. Types of Performance Evaluations

1. Six-Month Probationary Evaluation. Newly hired staff, or staff members placed on probationary status by the Board, shall within six months of their hiring date or from the date on which they were placed on probationary status, be evaluated using the

Probationary Performance Evaluation form. Thereafter, if the staff member's performance is deemed to fully and consistently meet all performance standards delineated in the Probationary Performance Evaluation form, the staff member shall be removed from probationary status and evaluated using the standard anniversary date Performance Evaluation form.

2. Anniversary Date Performance Evaluation. Excepting Chief Counsel, staff on regular employment status shall be evaluated once a year by their hiring anniversary date using the standard anniversary date Performance Evaluation form.

#### C. Timeliness of Performance Evaluations

It is strongly encouraged that staff be provided with their performance evaluations on a timely basis. The evaluator should strive to complete such evaluations on or about the staff person's anniversary date. Upon completion of the performance evaluation process, Chief Counsel shall submit to the Personnel Committee completed staff evaluations. The Personnel Committee will review the completed staff evaluations and return them to Chief Counsel with its recommendations. At the next regularly scheduled meeting of the Board, Chief Counsel shall, during executive session, submit to the Board the staff evaluations returned by the Personnel Committee with his recommendations for review and approval of any pay merit increases. If the Board approves any pay merit increases, Chief Counsel shall promptly thereafter cause a personnel transaction order to be prepared for each staff member whose evaluation was approved and submit it to AOPC payroll to implement any pay merit increase.

#### D. Evaluator

1. The Board shall designate a Board Member to evaluate Chief Counsel's performance. The evaluating Board Member shall submit to the Executive Committee a completed evaluation for review. As part of the performance evaluation process, the Executive Committee may conduct interviews of other staff members and include such input in a final evaluation. Upon finishing the performance evaluation process, the Executive Committee shall submit its final evaluation with recommendations to the entire Board. Thereafter, the Chair shall meet with Chief Counsel and discuss Chief Counsel's performance.

2. Chief Counsel shall evaluate staff attorneys' performance.
3. Deputy Chief Counsel shall evaluate all other staff and submit such evaluations to Chief Counsel for final review and input.

## **PART TWO: Chief Counsel**

### **OP 2.11 – AUTHORITY OF CHIEF COUNSEL**

The Board shall appoint a Chief Counsel, whose general duties shall include managing and supervising the administrative activities of the Board's office, its staff attorneys, investigators and support staff. Chief Counsel is not empowered to exercise any of the responsibilities specifically reserved by the Board.

### **OP 2.12 – STANDARD MEETING MATERIALS**

Chief Counsel shall be responsible for facilitating the preparation of all materials generated for Board meetings, including written memoranda containing staff counsel recommendations respecting matters to be considered by the Board, and these materials shall be included in the Board's pre-meeting agenda packets.

The written memoranda provided to the Board shall:

- (a) identify the complainant and relevant background information, if known;
- (b) identify the respondent judge and relevant background information, including the county where the judge serves, when the judge was elected or appointed to the bench and prior history of discipline, if any;
- (c) give a fair and accurate statement of the claims made in the complaint;
- (d) delineate the scope and results of the investigation;
- (e) identify the Code or Rule sections, Pennsylvania Constitutional provisions, or Supreme Court orders, implicated;
- (f) give relevant factual and legal analysis with a recommendation for disposition.

Unless otherwise directed by the Chair, the Board's pre-meeting agenda packets shall be distributed to the Board at least one week in advance of a scheduled board meeting in a manner mutually agreeable to Board members, which may include electronic distribution. Chief Counsel's Administrative Report shall also be delivered to the Board in advance of each meeting.

In the ordinary course, at each board meeting, the Chair or Chief Counsel shall introduce each matter for discussion and potential disposition by the Board.

### **OP 2.13 – REVIEWING AND PROCESSING COMPLAINTS**

Chief Counsel shall be responsible for assigning filed complaints to staff attorneys. Chief Counsel shall conduct an initial review of all filed complaints and assess the asserted claims before assigning them to staff attorneys for further review, processing, and investigation. Chief Counsel shall indicate if he or she concludes that the nature of the complaint is of such serious import that it should receive priority attention, consistent with OP 3.04.

### **OP 2.14 – INVESTIGATIVE SUBPOENAS**

Pursuant to the Board's investigation authority under Article V, §18(a)(7) of the Pennsylvania Constitution, Chief Counsel, or Deputy Chief Counsel when Chief Counsel is absent or unable to act, may issue subpoenas to compel testimony under oath of witnesses, including the judge who is the subject of an investigation, and to compel the production of documents, books, accounts and all other records (in whatever form, paper, electronic, or otherwise) relevant to the Board's investigation.

### **OP 2.15 – BUDGET DEVELOPMENT AND ADMINISTRATION OF FUNDS**

For each fiscal year, Chief Counsel shall be responsible for developing and preparing the Board's proposed budget for submission to the Governor and the General Assembly. In developing the proposed budget, Chief Counsel shall consult with the Budget Committee. Once the budget is developed, Chief Counsel will present it to the Board for approval. The Board shall review and vote to authorize any budget submissions, which will be listed as a separate item in the budget request submitted by the Supreme Court. Chief Counsel and the Chair

shall attend any House of Representatives or Senate hearings on the Board's budget proposal and be available to provide information or clarification regarding it.

#### **OP 2.16 – EXPENDITURES OF THE JUDICIAL CONDUCT BOARD**

A. Chief Counsel shall be responsible for facilitating the Board's daily office operations by authorizing the payment of Board expenditures. Unless directed otherwise by the Board, Chief Counsel has general authority to authorize the payment of Board expenditures up to \$5,000. For expenditures over \$5,000, Chief Counsel must present them to the Board, which must vote to authorize payment.

B. In the event it is necessary to immediately pay a Board expenditure exceeding \$5,000 before it can be presented for payment authorization at the next regularly scheduled Board meeting, the Chair may authorize Chief Counsel to authorize such payment. Thereafter, the paid expenditure will be presented to the Board at its next regularly scheduled meeting with a request to ratify the payment.

*Amended, effective April 5, 202*

#### **OP 2.17 – ANNUAL REPORT AND STATISTICAL RECORDS**

Each year, Chief Counsel shall be responsible for preparing and publicly disseminating an Annual Report containing information about the Board, its operations, procedures, and complaint process, and statistical information about the complaints filed and the Board's activity. Prior to public dissemination, Chief Counsel shall provide the prepared Annual Report to the Board for its review and approval.

#### **OP 2.18 – NOTICE OF PUBLIC ACTION**

Chief Counsel shall provide advance notice to the Board of the filing of a Formal Board Complaint before the Court of Judicial Discipline. Chief Counsel shall immediately inform the Board when the Court of Judicial Discipline issues Findings of Fact and Conclusions of Law or imposes a sanction regarding a pending case. For all other activity on cases pending before the Court of Judicial Discipline, Chief Counsel will keep the Board apprised of such activity in a Litigation Update provided at each Board meeting.

#### **OP 2.19 – PRESS RELEASES AND MEDIA CONTACTS**

Routine press releases (such as those reporting on new Board appointments and public information concerning cases filed or pending before the Court of Judicial Discipline) shall be prepared by staff and issued with the approval of the Chair. All other press releases shall be approved by the Board.

Unless otherwise directed by the Chair, and consistent with the Board's mandate of confidentiality in its proceedings, Chief Counsel is authorized to answer media inquiries on behalf of the Board regarding Board matters. While nothing in these OPs prohibits the response to questions raised in the normal course of business, the JCB shall not respond to inquiries from identified groups, organizations, or individuals that would otherwise cause the impartiality of the Board to be questioned, or create the appearance thereof.

#### **OP 2.20 – APPEARANCE AT PUBLIC HEARINGS, SEMINARS, MEETINGS, OR EVENTS**

The Board shall be informed in advance of any proposed appearance by any member of the Board, Chief Counsel, or staff at any public hearings, seminars, professional meetings, or events. Except for customary scheduled appearances by Chief Counsel or staff involving matters pending in the Court of Judicial Discipline, or as instructors as part of the Minor Judiciary Education Program, all other appearances shall be approved in advance by the Board.

#### **OP 2.21 – NOTIFICATION OF LEGAL ACTION AGAINST BOARD**

Chief Counsel shall immediately notify the Board of any legal action taken against the Board, Board members, Chief Counsel, or the Board's staff, including the service of a civil complaint or subpoena on the Board.

#### **OP 2.22 – RESPONSIBILITIES IN FURTHERANCE OF BOARD OBJECTIVES**

Such responsibilities not specifically reserved to the Board, necessary to the administration and function of the Board, are included herein by reference, as responsibilities of Chief Counsel.

## **CHAPTER THREE – COMPLAINTS**

### **OP 3.01 – OPENING A COMPLAINT**

Except when acting on its own initiative or at the written request of the Supreme Court of Pennsylvania, or the State Court Administrator, the Board shall not initiate any preliminary inquiry or investigation without having first received a complaint.

Use of the proscribed Confidential Request for Investigation (CRI) form is the preferred method of receiving complaints and allows for the prompt communication of facts relevant to the investigation. However, anonymous complaints shall not be barred. All complaints shall be entered into the case management system.

### **OP 3.02 – ANONYMOUS COMPLAINTS**

Anonymous complaints in whatever form shall be entered into the case management system. All such anonymous complaints received must be presented to the Board at its next regularly scheduled meeting for review and approval in advance of either opening a file or initiating a preliminary inquiry or investigation. If the source of the anonymous complaint is known, such information shall be recorded by Chief Counsel for purposes of any ensuing preliminary inquiry or investigation as well as for advising the complainant of the ultimate disposition of the Board.

If the Board approves the opening of a file based on an anonymous complaint, Chief Counsel will open a file and assign it to counsel, who will conduct a preliminary inquiry. If the preliminary inquiry reveals facts that corroborate the anonymous complaint, it will remain open and investigation will move forward in its normal course to final disposition by the Board. If the preliminary inquiry does not reveal facts that corroborate the anonymous complaint, the anonymous complaint will be presented to the Board for dismissal with a notation that the preliminary inquiry did not corroborate the complaint.

### **OP 3.03 – SCOPE OF PRELIMINARY INQUIRY BY STAFF**

Upon Chief Counsel's assignment of a filed complaint, the assigned staff attorney shall review the complaint and undertake a preliminary inquiry into the asserted claims. Upon request, Chief Counsel shall

inform and update the Board concerning the scope and extent of a preliminary inquiry. In this regard, the case management system shall be kept current in order to generate data as requested by the Board.

A preliminary inquiry may include, but is not limited to, legal analysis and fact finding, examination of documents submitted with the complaint, examination of court documents relevant to the underlying legal matter and asserted claims (e.g. case dockets, pleadings, transcripts), and assignment of the matter to an investigator to conduct witness interviews or other investigation.

As part of a preliminary inquiry, staff attorneys may use Letters of Inquiry to gather information relevant to a complaint. Unlike the NOFI, letters of inquiry may, but need not, contain a listing of the specific provisions of the Constitution, statute, or applicable ethical canons and rules that may have been violated, but shall contain the specific allegations under investigation. Letters of Inquiry may be either formal or informal as follows:

- A. Informal Letter of Inquiry – In carrying out a preliminary inquiry, Chief Counsel or staff attorneys may issue an Informal Letter of Inquiry when appropriate without obtaining prior authorization from the Board. The informal Letter of Inquiry shall indicate that it is issued under the general authority of the Board, but that the subject complaint has yet to be brought to the Board for final disposition.
- B. Formal Letter of Inquiry – With Board authorization or direction, Chief Counsel or staff attorneys, in order to facilitate a preliminary inquiry, may issue a Formal Letter of Inquiry. The Formal Letter of Inquiry shall indicate that it is issued under the direct authority of the Board, but that the subject complaint has yet to be brought to the Board for final disposition.

### **OP 3.04 – EXPEDITIOUS RESOLUTION OF COMPLAINTS**

It is the policy of the Board that each and every matter shall be brought to a fair conclusion as promptly as possible, consistent with the character of the matter and the resources of the Board and its staff.

- A. Prioritization of Investigations.

Urgent priority shall be given to matters based on consideration of the level of the judiciary involved, the danger of extreme prejudice to the administration of justice, and where the matter has garnered great public interest or notoriety through media coverage.

B. Expedited Review of Confidential Requests for Investigation.

1. There are five (5) types of cases for which review will be expedited:

- a. Complaints which are time barred under the Board's rules of procedure;
- b. Complaints involving persons who are not subject to the Board's jurisdiction;
- c. Bald allegations of misconduct with no supporting documentation or evidence, such as "the judge was rude or biased" or the equivalent;
- d. Complaints which involve strictly legal error (SLE), which is defined as an assertion of fact in a confidential request for investigation that, if believed, would be a proper subject for appeal if the assertion had been properly raised and preserved during a court or other adjudicative proceeding;
- e. Serial Complainants: When a complainant has filed three (3) or more complaints against the same judge, or the same or similar complaint against two (2) or more judges, the complainant shall be deemed a "serial complainant." For all complaints filed by a serial complainant, Chief Counsel will conduct a preliminary review. If Chief Counsel concludes in his or her reasoned judgment that the complaint fails to state an actionable claim, is frivolous on its face, raises issues that have previously been reviewed by the Board, or is filed for an improper purpose (e.g. to create conflict to facilitate judge shopping), or makes claims having no relation to judicial conduct, Chief Counsel may expedite the review and submit the matter to the Board for disposition with a brief description and conclusion or, alternatively, assign the

matter to the staff attorney familiar with the prior complaints to submit the matter to the Board.

2. Chief Counsel shall preliminarily identify those complaints which involve the circumstances noted in paragraph B1(a)-(e) and shall so note in the Board's case management system. Staff counsel shall review CRIs involving circumstances noted in paragraph B1(a), (c), (d), and (e) (when assigned by Chief Counsel) and either return them to Chief Counsel using what is designated a Strictly Legal Error Dismissal ("SLED") memoranda or address them after any further investigation with a DAPI memoranda. For matters addressed using a SLED memoranda, Chief Counsel shall review staff counsel's SLED memoranda and absent disagreement with staff counsel's legal analysis, indicate concurrence by signing off on the memoranda by initialing it and then submitting such matter to the Board for expedited dismissal. Non-jurisdiction complaints under paragraph B1(b) shall be presented to the Board as a separate category in list fashion on the Board agenda after being so identified by Chief Counsel.
3. It is the obligation of a complainant to explain the nature of his or her grievance against a judge, or, when documents or transcripts are submitted, to identify where in the documents or transcripts evidence can be found supporting their grievance. Chief Counsel and staff counsel should review the matter in a non-technical, general manner for any prima facie claim made under the Code, the Rules, or the Pennsylvania Constitution. A "prima facie claim" is one that on its face presents sufficient facts that would raise a presumption, unless disproved or rebutted, that a judicial officer has violated a Canon, Rule, or the Pennsylvania Constitution.

#### C. Complaints Alleging Improper Political Campaign Activity.

The Board will review complaints alleging improper political campaign activity in the normal course of investigation and review unless the complaint presents issues of such immediacy, or involving danger of prejudice to the administration of justice, that expedited review is deemed necessary.

## **OP 3.05 – PERCEIVED THREATS TO A JUDGE’S SECURITY**

### **A. Anonymous Complaints.**

In the event that an anonymous complaint contains a perceived threat to a named judge’s personal health or safety, Chief Counsel, or a staff attorney assigned to the matter by Chief Counsel, may proceed with a preliminary inquiry prior to the anonymous complaint being presented to the Board for review and formal approval. Chief Counsel, or Deputy Chief Counsel when Chief Counsel is absent or unable to act, is also authorized to immediately notify the named judge of the perceived threat and, if appropriate, law enforcement. Chief Counsel, or Deputy Chief Counsel when Chief Counsel is absent or unable to act, will report any such notification to the Board at its next regularly scheduled meeting when the anonymous complaint is presented for review and formal approval.

### **B. All Other Complaints.**

In the event that a complaint contains a perceived threat to a named judge’s personal health or safety, Chief Counsel, or Deputy Chief Counsel when Chief Counsel is absent or unable to act, is authorized to immediately notify the named judge of the perceived threat and, if appropriate, law enforcement. Chief Counsel, or Deputy Chief Counsel when Chief Counsel is absent or unable to act, will report any such notification to the Board at its next regularly scheduled meeting.

## **CHAPTER FOUR - LIMITATIONS ON BOARD ACTION**

### **OP 4.01 – LIMITATIONS ON BOARD AUTHORITY**

The Judicial Conduct Board is authorized to conduct investigations of judicial misconduct pursuant to Article V, §18 of the Pennsylvania Constitution and the Judicial Conduct Board Rules of Procedure. The purpose of the Board is to maintain the public confidence in the integrity and impartiality of the judiciary. While independent, the authority of the Board is subject to specific proscribed limitations.

### **OP 4.02 – TIME LIMITATIONS**

Misrepresentation by a judicial officer in the course of an investigation may constitute good cause for the Board to consider acts or omissions that would otherwise be time barred under Rule 15.

#### **OP 4.03 – NON JURISDICTION**

The authority of the Board is expressly limited to judicial officers of the Commonwealth of Pennsylvania and includes: Magisterial District Judges, Judges of the Philadelphia Traffic Court, Judges of the Philadelphia Municipal Court, Judges of the Courts of Common Pleas, Commonwealth and Superior Court, and Justices of the Supreme Court, and all Senior Judges. Judges of the Federal Court, administrative agencies, and those performing the functions of a hearing officer or master are not within the jurisdiction of the Board.

#### **OP 4.04 – RULE 18 DISCLOSURES TO LAW ENFORCEMENT OR OTHER AGENCIES**

Chief Counsel shall refer non jurisdiction complaints to the agency having jurisdiction. Further, Chief Counsel is authorized, as the Chair's designee, to make Rule 18 disclosures to appropriate agencies of information related to violations of criminal laws or violations of rules of professional conduct which, in Chief Counsel's considered and reasoned judgment, are permissible and consistent with Rule 18. Chief Counsel shall advise the Board of any such disclosures made at its next regularly scheduled meeting.

#### **OP 4.05 – COMPLAINTS INVOLVING CRIMINAL CONDUCT**

Any complaint filed with the Board that alleges criminal activity by a judge shall be brought to the Board's immediate attention, but no later than its next regularly scheduled meeting, when it shall be placed on the agenda for discussion. When such a complaint is brought to the Board's immediate attention, Chief Counsel shall request the Chair to call a special meeting by teleconference unless the regularly scheduled meeting is held in close proximity and the matter will be placed on the meeting agenda.

Recognizing that the Board is an independent agency within the Judicial Branch and was not created to be a criminal justice agency, and is not conferred by the Pennsylvania Constitution with the powers or authority of a criminal justice agency, when a complaint is filed with the Board alleging criminal conduct by a judge, the Board may, in its reasoned discretion, but is not required to, defer its investigation, in whole or in

part, in order not to obstruct or impede a criminal investigation. In making this decision, the Board may consider whether a duplicative, potentially overlapping investigation would constitute the best use of its limited resources and possibly prejudice the criminal investigation. The Board may also consider whether the criminal prosecuting agency has specifically requested that the Board defer its own investigation. When the Board determines it is appropriate to defer its investigation during the pendency of a criminal investigation, it shall continue to monitor the status of the criminal investigation to the extent practicable and hold in abeyance its investigative and prosecutorial authority awaiting the outcome of the disposition of the criminal investigation and/or prosecution. Notwithstanding an initial decision to hold its investigative and prosecutorial authority in abeyance, the Board may, in its discretion, at any time continue an investigation regardless of a pending investigation by a criminal law enforcement agency.

#### **OP 4.06 – COMPLAINTS OF LEGAL ERROR**

Generally, the Board will not consider complaints of legal error as constituting judicial misconduct. The Board recognizes that judges must be able to rule in accordance with the law they believe applies, free from considerations of discipline or reward. The Board recognizes that in making legal decisions, judges are human and may make mistakes, and that being imperfect is not unethical. The Board does not act as an appellate court to review the merits of a judge's legal decisions and complainants are limited solely to appellate court remedies to address legal error claims. The Board may, however, consider that a judge has committed judicial misconduct when it determines the legal error is

- repeated and intentional
- a pattern of decisions willfully or blatantly ignoring or misstating the law (e.g. failing to advise defendants of their rights during criminal proceedings)
- the product of fraud, corrupt motive or bad faith (e.g. acting out of pique or to exact revenge)
- a failure to exercise judicial discretion (e.g. using a coin flip or straw poll to make a decision)
- a failure to follow procedures (e.g. failing to hold a hearing before finding contempt, which may affect a liberty interest if sentenced to incarceration)

- egregious (e.g. finding a defendant guilty without a plea or trial; not permitting a pro se defendant to cross examine a prosecution witness)
- a pattern of legal error upon a legal issue where there is no confusion or question

## **CHAPTER FIVE – CONFIDENTIALITY AND RECORD RETENTION**

### **OP 5.01 – CONFIDENTIALITY OF JCB PROCEEDINGS**

A. Consistent with Article V, §18(a)(8) of the Pennsylvania Constitution, and subject to Rules 14 and 18 of the Judicial Conduct Board Rules of Procedure, all complaints, processes, deliberations and records of the JCB shall be treated as confidential and not public information, and shall not be divulged in any context or in any forum except when otherwise authorized by the Board or in response to a court order. A respondent judicial officer may waive confidentiality with respect to a complaint, but the Board shall reserve judgment, in its discretion, as to whether or not to make the complaint public. A public response, if any made by the Board, should be limited to: (a) a Board Complaint (which should be attached to a press release) was filed against the named respondent judicial officer; (b) the respondent judicial officer has the right to an attorney, (c) the Board has the sole burden of proof which is by clear and convincing evidence; and, (d) it is presumed that the respondent judicial officer has not committed any violation of the Code, Rules, or Constitution.

### **B. [RESERVED]**

### **OP 5.02 – BOARD MEMBER ACCESS TO JCB FILES AND RECORDS**

Generally, any inquiry made by a Board Member to staff concerning a pending complaint must be made by and through Chief Counsel. Chief Counsel will memorialize for the benefit of all other Board Members the nature of the inquiry and Chief Counsel's response. However, no information whatsoever shall be made available to any Board Member about a pending complaint from which that Board Member has recused or been disqualified, or to a Board Member who has been designated by Chief Counsel as a potential witness. This OP does not prohibit Board Members from contacting and discussing with staff attorneys any matter presented as an agenda item in a board packet in advance of that board meeting.

## **OP 5.03 – RECORD RETENTION POLICY**

### **A. Digital Images/CD**

1. All complaint files shall be saved as digital images capable of being electronically reproduced as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.
2. All Formal Charges filed in the Court of Judicial Discipline, transcripts, decisions and recommendations and all other materials associated with the Board Complaints shall be transferred to digital images/CD capable of being electronically reproduced as soon as practical.
3. All Minutes shall be transferred to digital images/CD storage capable of being electronically reproduced as soon as practical as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.
4. One copy of each Annual Report shall be transferred to digital images/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

### **B. Retention of Files and Other Materials**

1. All Board Complaints, transcripts, decisions and recommendations and all other materials associated with the Board Complaints shall be maintained on the Board's premises. Any consent discipline also shall be maintained on the Board's premises.
2. All Minutes shall be maintained on the Board's premises. All electronic, audio, video, or visual recordings of the board meetings shall be destroyed as set forth in OP 2.08.
3. All other materials shall be retained except as set forth in subsection Section C.

### **C. Disposal of Materials**

Unless required for an active, ongoing investigation, the following document destruction policies shall be employed:

1. Deceased judges: After being saved as a digital image capable of being electronically reproduced the complaint file(s) (but not the Formal Complaints) against any deceased judge shall be destroyed.

2. Dismissals: If the complaint is dismissed, the file shall be destroyed six years after the date of the dismissal letter, or after being saved as a digital image capable of being electronically reproduced, whichever is later.

3. Correspondence and miscellaneous material to/from potential Complainants: All correspondence and miscellaneous material to or from potential Complainants who elected not to proceed by filing a proper Request for Investigation shall be destroyed after three years after being saved as a digital image capable of being reproduced.

4. Other correspondence: All correspondence to or from the Board, including to or from Board members, and including the "chrono" file, shall be destroyed after six years after being saved as a digital image capable of being reproduced.

5. Bills and Invoices: All bills and invoices shall be destroyed after seven years.

6. Personnel files: Personnel files may be transferred to digital images/CD capable of being reproduced electronically. The paper files shall be destroyed after the elapse of any statute of limitations applicable to the initiation by the employee of a civil action against the Board or the Commonwealth.

#### D. Procedure for Destroying Materials

##### 1. Designation by the Chief Counsel

Chief Counsel, as necessary, but at least once per year, shall review all materials that may be disposed of in accordance with this policy and recommend to the Board necessary action that may be taken in conformity with the policy.

##### 2. Disposal of Materials

The Chief Counsel shall arrange for the secure and confidential disposal of all materials so designated by the Board as soon thereafter as practicable.

**CHAPTER SIX – COUNSEL  
[RESERVED]**

**CHAPTER SEVEN – TRIAL AND PRE-TRIAL PROCEDURES  
[RESERVED]**

**CHAPTER EIGHT – DISPOSITIONS**

**OP 8.01 – REVIEW OF COMPLAINTS**

A. In its reasoned discretion, the Board may resolve a complaint filed against a judicial officer as it deems appropriate considering all facts and circumstances and any mitigating factors, including the following non-exclusive factors:

1. The Nature of the Misconduct

- Whether the misconduct occurred in the judge's official capacity or in the judge's private life;
- Whether the misconduct occurred in the courtroom or in the judge's administrative role;
- Whether the judge exploited the judicial position to satisfy personal desires;
- Whether the misconduct constituted a crime, particularly one of a type over which the judge's court has jurisdiction;
- Whether the misconduct involved dishonest acts or moral turpitude;
- Whether the judge acted in bad faith, good faith, or negligently;
- Whether the judge's act was spontaneous, premeditated or deliberate;
- Whether the judge was motivated by compassion for others or for person profit, vindictiveness, or other dishonest and selfish motives;
- Whether the conduct involved the appearance of impropriety or an actual impropriety;
- Whether the misconduct affected or appeared to affect the administration of justice;
- Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result or merely delayed the result;

- Whether the judge's conduct was contrary to a public policy to which the state has made a commitment;
- Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion; and
- Whether the misconduct evidenced lack of independence or impartiality.

## 2. The Extent of the Misconduct

- Whether the misconduct was an isolated instance or part of a pattern or course of conduct;
- The actual or potential for harm to the court system, to litigants, and to the public's perception of the fairness of the judicial system:
  - The number of victims;
  - The vulnerability of the victims; and
- Whether there was indirect economic detriment to the public.

## 3. The Judge's Culpability

- Whether the judge was suffering from personal or emotional problems;
- Whether the judge was suffering from physical or mental disability;
- Whether the judge was impaired by alcoholism or drug abuse;
- Whether the judge's problems were due to stress;
- Whether there was judicial precedent that the judge's conduct was unethical;
- Whether other judges have been disciplined for similar misconduct;
- Whether the judge asked for and complied with a judicial ethics advisory opinion; and
- Whether the judge ignored others' efforts to persuade the judge to change his or her behavior.

## 4. The Judge's Conduct in Response to the Board's Inquiry

- Whether the judge acknowledged the misconduct, took responsibility, or showed remorse;
- Whether the judge made an effort to change his or her conduct;

- Whether the judge attempted to blame his or her conduct on others;
- Whether the judge failed to respond to the Board's inquiry;
- Whether the judge advanced an unlikely defense;
- Whether the judge attempted to interfere with witnesses;
- Whether the judge was candid or less than forthcoming with Board counsel or Board Investigator;
- Whether the judge presented false evidence or gave false testimony to Board counsel;
- Whether the judge gave evasive testimony; and
- Whether the judge showed a contemptuous attitude toward Board proceedings.

#### 5. The Judge's Record

- The length of time the judge has served;
- Whether the judge was experienced and should have been familiar with the high standards of judicial behavior;
- Inexperience in the practice of law;
- Whether the judge had previous NOFI's or Letters of Counsel;
- The remoteness of any previous Board's action;
- The similarity between the previous conduct and the current conduct;
- Whether the judge complied with prior Board recommendations;
- The judge's reputation;
- Positive contributions made by the judge to the court and community;
- The judge's commitment to fairness and innovative procedural reform; and
- The judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.

#### 6. Any Other Factors Relevant to the Disposition of a Complaint

B. In dismissing a complaint, the Board may use any of the following procedures:

1. Non-Jurisdictional Dismissal – The Board may dismiss a complaint involving persons who are not subject to the Board's jurisdiction.

2. Strictly Legal Error Dismissal (SLED) – The Board may dismiss a complaint as strictly legal error if it satisfies the criteria for expedited review listed under OP 3.04B1(a), (c), (d), and (e) and upon finding that there is no existing probable cause to file formal charges in the Court of Judicial Discipline.
3. Dismissal After Preliminary Inquiry (DAPI) – The Board may dismiss a complaint upon a finding that there is no existing probable cause to file formal charges in the Court of Judicial Discipline.
4. Dismissal with Letter of Caution – The Board may dismiss a complaint with a cautionary instruction when it concludes that the conduct at issue comes close to violating, but does not violate, the Code or Rules, a Constitutional provision, or Order of the Supreme Court, or where it concludes that such conduct is a violation, but considering all facts and circumstances and mitigating factors, including lack of prior disciplinary history, a cautionary instruction is an appropriate disposition. Upon direction by the Board, the cautionary instruction may also be given by an in-person meeting or telephone call from a designated board member or staff attorney, subject to OP 8.04. ***(See Enclosure A, sample letters of caution).***
5. Dismissal with Letter of Counsel – The Board may dismiss a complaint utilizing a Letter of Counsel procedure when it concludes that the conduct at issue violates the Code or Rules, a Constitutional provision, or Order of the Supreme Court, and there is probable cause to file a Board Complaint in the Court of Judicial Discipline, but considering all facts and circumstances and mitigating factors, including lack of prior disciplinary history, resolving the matter privately with a Letter of Counsel is an appropriate disposition. A Letter of Counsel dismissal may include conditions, such as probation, as the Board deems appropriate.

As part of the Letter of Counsel procedure, a judicial officer must (1) meet with Chief Counsel or his designee to receive the Board’s official private admonition regarding the conduct at issue; (2) sign a Statement of Consent agreeing that the Letter of Counsel may be used during future proceedings before the Court of Judicial Discipline or the Supreme Court of Pennsylvania if future complaint(s) are lodged against that same judicial officer and the Board directs that action be taken

on such complaint(s) before either Court; (3) and agree to, and satisfy, any conditions required by the Board.

In the Statement of Consent, the judicial officer must acknowledge that the Board may utilize the Letter of Counsel in public proceedings before the Court of Judicial Discipline or the Supreme Court of Pennsylvania if it directs that action be taken on any future complaint(s) against the judicial officer before either Court. However, if the Board does not authorize court proceedings for a subsequent complaint, the Letter of Counsel will remain a non-public, confidential document within the closed complaint file to which it pertains. The Board will not provide a copy of the Letter of Counsel to the complainant or release it to the public. The Board will, however, advise the complainant that a Letter of Counsel disposition was used to resolve his or her complaint. **(See Enclosure B, sample letters of counsel; public and non-public).**

The Statement of Consent that a judge must sign shall be substantially in the following form:

**Statement of Consent**

I, [Name of Judicial Officer, Court, Judicial District, County in Pennsylvania], consent to the dismissal of [Complaint Number(s)] with the issuance of this Letter of Counsel.

I understand and agree that the contents of this Letter of Counsel and any supporting facts for this Letter of Counsel derived from the Board’s investigation and review of the complaint(s) at issue may, if warranted, be used during any future proceedings involving new complaint(s) against me before the Board, or in any future public proceedings brought against me before the Court of Judicial Discipline or the Supreme Court of Pennsylvania.

Further, I acknowledge understanding that if no future public proceedings are authorized against me by the Board on new complaint(s), the Letter of Counsel in this matter shall remain a non-public, confidential document within the closed complaint file to which it pertains.

\_\_\_\_\_  
[Printed name of Judicial Officer]

\_\_\_\_\_  
DATE

\_\_\_\_\_  
[Printed name of Representing Attorney]

\_\_\_\_\_  
DATE

**OP 8.02 – RESIGNATION IN LIEU OF FORMAL CHARGES**

In recognition that if the Board were to proceed against a judicial officer in the Court of Judicial Discipline and sustain its burden of proof, the most serious sanction that could be imposed is removal from office and a bar to holding judicial office in the future, the Board may, in its reasoned discretion, and considering all facts and circumstances,

determine to conserve its limited resources for other matters and forego prosecuting formal charges when (1) after receiving a NOFI a judicial officer agrees to resign or retire from judicial office; (2) agrees to not seek future judicial office; and (3) agrees to not seek senior judge status.

### **OP 8.03 – PROBATION**

#### **A. Standard Probation Conditions**

When a judge is subject to a term of probation by direction of the Board as part of an agreement to resolve a pending complaint or by sanction from the CJD, the Board shall monitor probation using Probation Terms and Conditions and a Probation Reporting Schedule. The Probation Terms and Conditions shall include the following standard probation conditions:

- a) You shall report to the Board on a monthly basis as directed by the Board in a provided Probation Reporting Schedule. Your reporting may include in-person, mail reporting, or a combination of both as directed by the Board in your issued Probation Reporting Schedule.
- b) If your probation term is for a period of one year or more, you shall report to the Board in person a minimum of four (4) times in a given year period, or once every three (3) months. Your reporting dates and times will be listed in your Probation Reporting Schedule.
- c) If your probation term is for a period of less than one year, you shall report to the Board as directed by the Board in the Probation Reporting Schedule.
- d) If your probation reporting includes written reporting through the mail, such reporting shall be made by mail postmarked by the first day of each mail reporting month as listed in the Probation Reporting Schedule. You shall certify that you are in compliance with your Probation Terms and Conditions on a Probation Compliance Certification form and mail it to the attention of Chief Counsel.
- e) You shall abide by any written or verbal instructions from the Board and respond promptly to any communication from the Board.

f) You shall promptly notify the Board of any physical or mental health condition that would impact your ability to comply with probation terms and conditions.

g) You shall promptly notify the Board if you change your home address.

h) You shall promptly notify the Board of any facts or circumstances that may impact your ability to comply with your probation terms and conditions.

i) You shall comply with the mandates of Article V, Sections 17 and 18 of the Pennsylvania Constitution pertaining to the conduct of judicial officers, the Code of Judicial Conduct, the Rules Governing Standards of Conduct of Magisterial District Judges, or Orders of the Supreme Court of Pennsylvania governing judicial conduct.

j) You shall not directly or indirectly retaliate against any person, or take adverse administrative action against any person subject to your direction and control, as a reprisal for their actions in cooperation with the Board regarding prior or pending investigations or prosecutions of your conduct. Retaliatory conduct against a person subject to your direction and control shall include, but is not limited to, the following: (1) firing, demoting, or reassignment of duties without cause; (2) petty conduct that contributes to an unfriendly, unprofessional, non-collegial work environment; (3) conduct that serves to ostracize such person from other staff members; (4) conduct that creates unjustified onerous working conditions; or (5) conduct that is contrary to relevant federal or state employment law. Retaliatory conduct shall not include a firing, demotion, or reassignment of duties for cause.

Upon being provided with the Probation Terms and Conditions and the Probation Reporting Schedule, the judge shall sign an Acknowledgment and Certification that the judge has received the Probation Terms and Conditions and the Probation Reporting Schedule, that the judge has read them, understood them, and agrees to fully comply with them.

#### B. Acknowledgment and Certification

When a judge is placed on probation, he or she shall be provided with a copy of the Probations Terms and Conditions and the Probation Reporting Schedule. After receiving the Probations Terms and Conditions and the Probation Reporting Schedule, the judge must sign an Acknowledgement and Certification which shall be substantially in the following form:

### Acknowledgement and Certification

I hereby acknowledge and certify that I am on probation and that I have received my Probation Terms and Conditions and my Probation Reporting Schedule. I further acknowledge that I have read my Probation Terms and Conditions and reviewed my Probation Reporting Schedule, that I understand them, and that I shall fully comply with them.

I understand that if I violate any of my Probation Terms and Conditions and my probation was imposed as part of a sanction from the Court of Judicial Discipline, the Board may take further action before the Court for such violation, which may, if the Court finds me in violation, result in the imposition of a more serious sanction. I also understand that if my probation is Board imposed, and the Board determines that I have violated my Probation Terms and Conditions, the Board may summarily revoke my probation and proceed to address the underlying complaint(s) filed against me in its normal course in accordance with its Rules and Operating Procedures.

\_\_\_\_\_  
[Printed name of Judicial Officer]

\_\_\_\_\_  
DATE

\_\_\_\_\_  
[Printed name of Attorney for Judicial Officer]

\_\_\_\_\_  
DATE

### C. CJD Sanction of Probation

When the CJD sanctions a judge with a term of probation to be monitored by the Board, in addition to the Standard Probation Conditions, the Probation Terms and Conditions shall incorporate any

specific sanction directives from the CJD and any terms and conditions relevant to the conduct for which the judge was sanctioned. For example, if a judge was sanctioned for conduct involving the use of alcohol, the Probation Terms and Conditions may include a directive that the judge shall not consume alcoholic beverages during court business hours or over the lunch hour during court business hours.

#### D. Board Imposed Probation

With the agreement of the judge against whom a complaint has been filed, the Board may resolve a pending complaint by imposing a period of probation, which, if successfully completed by the judge, will result in dismissal with a Letter of Counsel.

When the Board imposes a term of probation as part of an agreement to resolve a pending complaint, in addition to the Standard Probation Conditions, the Probation Terms and Conditions may include any directives the Board deems necessary to address the specific conduct at issue in the pending complaint. For example, the Board may require that a President Judge be informed and involved as part of the probation and that the judge on probation waive confidentiality regarding Board communications to the President Judge in order to monitor the judge's conduct during the probation term.

#### E. Probation for Complaints Involving Use of Alcohol; Controlled Substances; Physical Disability or Condition; or Compulsive and Addictive Behaviors or Disorders

In addition to, or in combination with, the Board's Rules of Procedure governing Special Procedures for Cases Involving Mental or Physical Disability under Chapter 10 and its Special Procedures for Cases Involving Substance Abuse under Chapter 11, the Board may resolve complaints about a judge's conduct involving the use of alcohol or controlled substances, or physical conditions, disabilities, or disorders; or compulsive and addictive behaviors, including gambling, through a term of probation. If the Board offers probation to a judge to resolve such complaints, and the judge agrees to accept probation, the judge shall first contact Judges Concerned for Judges (JCJ) and, with the assistance of JCJ staff and volunteers, schedule and submit to an assessment by a qualified healthcare professional. The assessment must address the issues identified by the Board as involved in the pending complaint. The judge must authorize the release of such assessment to the Board once completed. The judge may also, if he or she disagrees with the JCJ assessment, independently choose a qualified healthcare professional to perform a second assessment and submit it

to the Board. The Probation Terms and Conditions will be based on the Board's consideration of any assessment(s) suggested recommendations for treatment.

#### **OP 8.04 – BOARD MEMBER CONTACT WITH SUBJECT OF COMPLAINT AS PART OF DISPOSITION**

Whenever the Board designates that a Board Member will contact a judge as part of a final disposition of a pending complaint, either by meeting with the judge or speaking with them on the telephone, the Board Member so designated must memorialize such contact in writing and provide it to the assigned staff counsel, or, alternatively, relate the information to assigned staff counsel, who will then memorialize the information. Such information shall be added to the file.

#### **OP 8.05 – INTERIM SUSPENSION**

When a judicial officer is charged or indicted with a felony criminal offense, Board Counsel is authorized to file a petition requesting interim suspension. Unless the Board directs otherwise, Board Counsel will request interim suspension with pay. For all other circumstances where the filing of a petition for interim suspension may be appropriate, Board Counsel shall request authorization and direction from the Board on whether to seek interim suspension with or without pay.

#### **OP 8.06 – SANCTION RECOMMENDATION**

For those matters scheduled for a sanction hearing before the Court of Judicial Discipline, absent Board direction, Board Counsel has discretion to decide what, if any, sanction recommendation should be made on a particular case. Board Counsel may make an appropriate sanction recommendation considering the particular facts and circumstances of the case before the Court. Absent Board direction, and when Board Counsel deems it necessary, Board Counsel may seek guidance from the Board on an appropriate sanction recommendation.

#### **OP 8.07 – APPEAL FROM COURT OF JUDICIAL DISCIPLINE**

No appeal shall be filed from an order of the Court of Judicial Discipline without Board authorization. When the Court of Judicial Discipline dismisses charges or an entire complaint filed by the Board against a judicial officer, the Board may authorize the filing of an appeal limited to questions of law. (See Pa.Const. art.V, §18(c)(3)).

