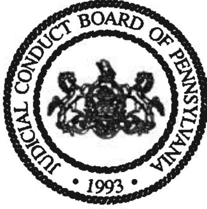

Judicial Conduct Board
Commonwealth of Pennsylvania
Joseph A. Massa, Jr., Chief Counsel
717-234-7911

Press Release

September 10, 2009

TO: **Media/Press**

FROM: **Judicial Conduct Board**

SUBJECT: Judicial Conduct Board Files Brief to In re Lokuta, 3 JD 06

Harrisburg. On September 10, 2009, the Board filed in the Pennsylvania Court of Judicial Discipline its Brief pursuant to the Order of Court dated May 13, 2009.

Counsel: **Board: Francis J. Puskas II, Esquire, Deputy Chief Counsel**

Appellant: Ronald V. Santora, Esq.

Contact: **Joseph A. Massa, Jr., Esq.**
Chief Counsel, Judicial Conduct Board
Francis J. Puskas II, Esq.
Deputy Chief Counsel

Note: Judicial Conduct Board Brief attached.

END

COMMONWEALTH OF PENNSYLVANIA

COURT OF JUDICIAL DISCIPLINE

2009 SEP 10 A 11:40
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COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

In re:

Ann H. Lokuta,	:	
Judge of the Court of Common Pleas;	:	
Eleventh Judicial District	:	3 JD 06
Luzerne County	:	

JUDICIAL CONDUCT BOARD BRIEF PURSUANT TO THE ORDER OF COURT DATED MAY 13, 2009

BY: FRANCIS J. PUSKAS II
Deputy Chief Counsel
Pa. Supreme Court ID No. 76540

Judicial Conduct Board
601 Commonwealth Avenue
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

DATE: September 10, 2009

SUMMARY OF ARGUMENT

The Respondent's latest proffered evidence, consisting of statements submitted from Patricia E. Benzi, Joseph S. Novak, Carolee Medico Olenginski, and Sandra M. Brulo, does not constitute "after-discovered evidence" under established law and does not merit the granting of an evidentiary hearing to further review such evidence or its affect on the Court's determination to remove the Respondent from judicial office.

The proffered statements are neither exculpatory, nor would they compel a different result if Respondent were granted a new trial. Further, for some of the proffered evidence, it is manifest the Respondent would be unable to demonstrate that it could not have been obtained at, or prior to, the conclusion of her trial by the exercise of reasonable diligence. At most, this latest proffered evidence is cumulative, or would be used solely for impeachment of credibility, both improper foundations for overturning a court decision, granting a new trial, or justifying the holding of an evidentiary hearing.

ARGUMENT

I. THE RESPONDENT HAS FAILED TO PRESENT "AFTER-DISCOVERED EVIDENCE" MERITING THE GRANTING OF AN EVIDENTIARY HEARING.

Preliminarily, the Board incorporates its originally filed Brief dated April 27, 2009, in response to the Order of Court dated March 27, 2009, and all argument set forth therein addressing Respondent's "after-discovered evidence," as part of this Brief.

In order to obtain relief in the form of a new trial based on "after-discovered evidence," Pennsylvania common law requires a petitioner to establish that such evidence

1) has been discovered after the trial and could not have been obtained at or prior to the conclusion of the trial by the exercise of reasonable diligence;
2) is not merely corroborative or cumulative;
3) will not be used solely for impeaching credibility of a witness; and
4) is of such a nature and character that a different verdict will likely result if a new trial is granted.

Commonwealth v. Valderrama, 479 Pa. 500, 388 A.2d 1042 (1978) (hereinafter "Valderrama"); Commonwealth v. Washington, 592 Pa. 698, 927 A.2d 586 (2007); Commonwealth v. D'Amato, 579 Pa. 490, 519, 856 A.2d 806, 823 (2004); Commonwealth v. Pagan, 597 Pa. 69, 106, 950 A.2d 270, 292 (2008); Commonwealth v. Bormack, ___ Pa.Super. ___, ___, 827 A.2d 503, 506 (2003); Commonwealth v. Rivera, ___ Pa.Super. ___, ___, 939 A.2d 355, 359 (2007) ; Commonwealth v. Cobbs, ___ Pa.Super. ___, ___, 759 A.2d 932, 934 (2000); Commonwealth v. Bonaccurso, 425 Pa.Super. 479, 484, 625 A.2d 1197, 1199 (1993); Commonwealth v. Galloway, 433 Pa.Super. 222, 227, 640 A.2d 454, 456 (1994). As Pennsylvania law makes clear, the legal standard does not involve the Court weighing a nebulous notion of "taint" on proceedings, but rather specific consideration of certain factors.

Further, statutory authority for obtaining collateral relief in the form of a new trial based on "after-discovered evidence" is found in the Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §9541 et seq., which requires a petitioner demonstrate by a preponderance of the evidence that his or her conviction or sentence resulted from

> [t]he unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.

42 Pa. Cons. Stat. Ann. §9543(b)(vi). The key components of this provision require that "after-discovered evidence" be (1) exculpatory, and (2) such that it would have changed the outcome of trial had it been introduced.

Pennsylvania law defines exculpatory evidence as "evidence which extrinsically tends to establish defendant's innocence of the crimes charged, as differentiated from that which, although favorable, is merely collateral or impeaching." Commonwealth v. Gee, 467 Pa. 123, 131, 354 A.2d 875, 878 (1976) (quoting People v. Bottom, 76 Ms. 2d 525, 351 N.Y.S.2d 328,

334-335 (1974)), *overruled on other grounds,* 510 Pa. 123, 507 A.2d 66 (1986); Commonwealth v. Hicks, 270 Pa.Super. 546, 550, 411 A.2d 1220, 1222 (1979); Commonwealth v. Hudgens, 400 Pa.Super. 79, 97, 582 A.2d 1352, 1361 (1990); Commonwealth v. Watson, 355 Pa.Super. 160, 512 A.2d 1261 (1986) ; Commonwealth v. Lambert, ___Pa.Super. ___, ___, 765 A.2d 306, 325 n.15 (2000).

Following the conclusion of the 90-day period granted the Respondent to investigate and produce "after-discovered evidence" connecting the scandal in Luzerne County to her trial, in support of her request for an evidentiary hearing the Respondent filed of record four (4) witness statements. As will be discussed below *seriatim*, none of the proffered statements provide evidence qualifying as "after-discovered evidence."

A. Patricia E. Benzi

Benzi is a security guard at the Luzerne County Courthouse.

First, the Board notes that if Benzi were called to testify at an evidentiary hearing, or a new trial, her statement indicates some of the information she would provide would constitute hearsay. Second, if the information provided is accepted as true, it establishes the following:

- Between 2003 and 2006, on 10-20 occasions, Benzi delivered to Judge Conahan plain sealed envelopes from reputed mobster Billy D'Elia, which Judge Conahan accepted.

- At an unknown date, Benzi delivered to Judge Lokuta's tipstaff, Maureen Gushanas, a sealed envelope for Judge Lokuta from Billy D'Elia. The envelope had Judge Lokuta name written on it. Later that same morning, Gushanas, seeming angry, returned to Benzi the envelope and stated, *"You tell him, my Judge isn't like the rest of these Judges!"* Benzi took the envelope back.

- At an unknown date, D'Elia associate Robert Kulick invited Judge Lokuta to a party to *"make peace"* (about what is not explained) with Judge Conahan and Judge Lokuta refused to attend.

- At an unknown date, Kulick told Benzi it would be in Judge Lokuta's interest to *"mend things"* (what needed *"mending"* is not explained) with Judge Conahan.

- At an unknown date, Kulick asked Benzi to find out why Judge Lokuta was meeting with the FBI.

- At unknown dates, Kulick repeatedly told Benzi that Judge Conahan indicated that if Judge Lokuta would apologize (for what is not indicated), he would make *"everything go away"* (to what *"everything"* referred is not explained).

First, the information provided by Benzi fails to meet the test for "after-discovered evidence" because the Respondent cannot establish that such information could not have been obtained at or prior to the conclusion of her trial by the exercise of reasonable diligence.

Prior to charges being filed against the Respondent, in her May 23, 2005, letter (admitted trial exhibit R-1134) responding to the Board's Notice of Full Investigation, Respondent referenced Benzi to the Board. Specifically, at the end of her letter the Respondent provided a list of one hundred and nine (109) individuals "who should be interviewed" as having information pertinent to the claims against her being investigated by the Board. At number seven (7) on her list, the Respondent referenced "Patty Benzi, security guard c/o Luzerne county Courthouse." Though the Board specifically requested in its Notice of Full Investigation that the Respondent provide a proffer as to what any such referred witness would tell the Board relevant to the claims it had investigated, the Respondent provided nothing.

In fact, the Respondent made no reference to Benzi delivering a sealed envelope to her from Billy D'Elia or her rejection of it through Gushanas. At no time did the Respondent ever make known to the Board, or the Court, that she had been presented with a sealed envelope from Billy D'Elia or that she was invited by Kulick to a party to *"make peace"* with Judge Conahan. The Respondent never testified that she acted as a courthouse whistleblower about this activity, or that she knew or suspected other judges of receiving such envelopes from Billy D'Elia, or about any activity involving a kickback scheme with the new juvenile detention facility and Judges Conahan and Ciavarella.

While the Respondent now postures that Benzi is necessary to her case, she failed to import Benzi to her subsequent trial witness list and never called her as a trial witness. It is manifest, however, that Respondent knew of the existence of this witness prior to her 2007-2008 trial, and, as evidenced by Benzi's statement, was aware prior to her trial that D'Elia, through Benzi, had attempted to give her a sealed envelope, which she refused to accept. Her then tipstaff, Maureen Gushanas, on the Respondent's behalf, angrily returned to Benzi the envelope with a statement that the Respondent was not like *"the rest of these judges,"* possibly indicating the Respondent may even have been aware that other judges received envelopes from D'Elia. Nonetheless, the Respondent chose not to call Benzi as a trial witness. Had the Respondent been unaware, at or prior to the conclusion of her trial, of all information Benzi now relates in her statement, Respondent failed to exercise reasonable diligence to undercover it.

Second, had Benzi's information been introduced at trial, it is not exculpatory in any way and does not corroborate the Respondent's defense that Board witnesses conspired to fabricate evidence of judicial misconduct about her. Benzi's information is not of such nature or character that a different verdict would likely result from it if presented at a new trial. When juxtaposed to the mountain of evidence presented by all Board witnesses, at most, Benzi's information is merely cumulative evidence that the Respondent and Judge Conahan were not getting along, which both testified about at trial.

The hearsay statement that Judge Conahan indicated he would make *"everything go away"* also does nothing to corroborate Respondent's defense that Board witnesses conspired to fabricate evidence of judicial misconduct about her. If by "everything," a term which is neither defined or explained, Kulick was referring to the Board's investigation, something not established by Benzi's statement, such information, if true, would do no more than evidence a delusion on the part of Judge Conahan that he had any power to dictate how twelve (12)

members of the Judicial Conduct Board, half appointed by the Governor and half appointed by the Supreme Court, ultimately voted to resolve pending complaints being investigated against the Respondent.

B. Joseph S. Novak

As with Benzi, the Board notes that if Novak were called to testify at an evidentiary hearing, or a new trial, his statement indicates some of the information he would provide would constitute hearsay. Second, if the information provided is accepted as true, it establishes the following:

- In late 2003 or early 2004, Novak was at the Luzerne County Courthouse and overheard Judge Conahan and Judge Mark Ciavarella talking about the Respondent. Novak heard Judge Conahan say that they *"have to get rid of her, she is causing problems."* Novak provided no information to explain what *"problems"* Judge Conahan perceived the Respondent to be causing.

- At an unknown date, Chester Brozowski, a former Luzerne County Courthouse employee and former Pennsylvania State Police Trooper, told Novak that he was present at a meeting with Judge Conahan, Judge Ciavarella, and Court Administrator William Sharkey, when Judge Conahan told him they had to get the Respondent off the bench as she was causing problems by going to the authorities.

- At an unknown date, Respondent presided over a hearing on Novak's case Novak v. McDaniels, and ruled against Novak on a preliminary matter. Afterward, Novak was approached by a man he believed to be Court Administrator William Sharkey, who advised he could solve Novak's problem by having the case assigned to Judge Conahan. Afterward, Novak also complained to the local newspapers about Respondent. At an unknown date a few months later, Novak appeared before Judge Conahan, who called Novak to a sidebar where he gave Novak a "wink" and said he would be very fair in his case.

The information provided by Novak, as with Benzi, does not meet the test for "after-discovered evidence." Novak's information does not contradict Board witness testimony or establish that Board witness testimony was false. It also does not establish or corroborate the Respondent's defense that Board witnesses conspired to provide false testimony at the Respondents trial and/or that they fabricated incidents of judicial misconduct about the

Respondent as a result of being controlled by Judge Conahan. Further, it does not establish the Respondent's innocence of the Board charges or exonerate her from them. It is not exculpatory evidence.

Novak's statement, if true, that he overheard Judge Conahan telling Judge Ciavarella that they *"have to get rid of [Respondent], she is causing problems,"* is cumulative evidence that Judge Conahan did not get along with Respondent, perceived her as *"causing problems,"* and wanted her gone. In fact, at trial, it was no secret that Judge Conahan wanted the Respondent gone. He said as much when he testified, *"[I]t would have been better for me if she never showed up for work, and I could have assigned the work --,"* Trial Tr. 470:10-11, September 25, 2008. Novak's hearsay evidence based on Brozowski is also more cumulative evidence.

Glaringly, however, Novak's statement fails to establish that Judge Conahan actually controlled Board witnesses or coerced or pressured them to commit perjury by fabricating incidents of judicial misconduct about the Respondent as part of a conspiracy to assist him getting "rid" of her. In fact, if Judge Conahan wanted to "get rid" of the Respondent, the Respondent's own conduct and mistreatment of numerous people appearing before her in court, working for her, or working in her courtroom, already provided ample basis to achieve such a result. Most importantly, Novak's information is not exculpatory evidence that would have changed the outcome of the Respondent's trial.

C. Carolee Medico Olenginski

Olenginski is the former Prothonotary of Luzerne County.

Olenginski provides information which, if true, establishes the following:

- Olenginski was the former Prothonotary of Luzerne County serving immediately before Jill Moran.

- Olenginski reviewed Jill Moran's trial testimony of September 27, 2007. At trial, Moran, in part, testified that when she took office in 2002, Moran noticed the

clerks had a schedule for all judges and then a separate schedule they termed "special judge." Moran testified that generally, the Prothonotary clerks would agree among themselves which courtroom they would work in by order of seniority. The person with the most seniority would choose where they wanted to go. Because the most senior clerk would always opt not to be Respondent's clerk, they used the "special judge" schedule for Respondent's court, which was a rotation schedule requiring that someone would have to take a rotation with the Respondent for one week. Trial Tr. 1186:21 – 1189:1-2, September 27, 2007. Olenginski claims that when she was Prothonotary, she did not keep a "special judge" list and to the best of her knowledge, neither did her staff. Olenginski proffers this information in opposition to Jill Moran's testimony.

- Olenginski claims, again in opposition to Jill Moran's testimony, that when she was Prothonotary, Olenginski's staff respected Respondent as a meticulous jurist and several preferred to regularly serve as her clerk rather than appear in another Court. Olenginski identifies four (4) persons who were employed as clerks when Olenginski served as Prothonotary, namely Mary Nolan, Debra Wakevicz, Lana Bidwell, and Bonnie La Verdie Brown, as individuals that to the best of her knowledge regularly requested to serve in Respondent's court. None of these clerks testified at Respondent's trial. She also claims that to the best of her knowledge, the remaining clerks who served under her never complained or had difficulties with Respondent.

- Olenginski personally never had any problems with Respondent when she served as Prothonotary and found her to be a very hardworking, conscientious judge.

As with Benzi, the Respondent is unable to establish that the information from Olenginski could not have been obtained at or prior to the conclusion of her trial by the exercise of reasonable diligence. To the contrary, such information was easily at the fingertips of the Respondent and known to her.

Prior to charges being filed against the Respondent, in her May 23, 2005, letter (admitted trial exhibit R-1134) responding to the Board's Notice of Full Investigation, Respondent, as she did with Benzi, referenced Olenginski to the Board. Specifically, at the end of her letter the Respondent provided a list of one hundred and nine (109) individuals "who should be interviewed" as having information pertinent to the claims against her being investigated by the Board. At number three (3) on her list, the Respondent referenced "Carolee Medico, the former Prothonotary." Though the Board specifically requested in its Notice of Full Investigation that

the Respondent provide a proffer as to what any such referred witness would tell the Board relevant to the claims it had investigated, the Respondent provided nothing.

Subsequently, however, the Respondent included Olenginski in her trial witness list. In her Pretrial Memorandum, the Respondent listed Olenginski as trial witness number fifty-two (52) and averred she was calling Olenginski for the following reason:

> Respondent believes that Ms. Olenginski, former Luzerne County Prothonotary, may testify concerning Respondent's conduct of her courtroom and chambers, supervision of and/or interaction with court personnel, personal staff, legal interns and/or the general public and Respondent's demeanor and course of dealings with those who come into contact with her.

In Respondent's Revised Witness List, Olenginski was relisted as trial witness number fifty-seven (57). Respondent then averred she was calling Olenginski for the following reason:

> If called, Ms. Olenginski, former Luzerne County Prothonotary, will testify concerning Respondent's conduct of her courtroom and chambers, supervision of and/or interaction with court personnel, personal staff, legal interns and/or the general public and Respondent's demeanor and course of dealings with those who come into contact with her. In particular, if called, Ms. Olenginski will provide testimony relevant to paragraphs 4, 5, 9, and 11 of the Board's Complaint.

It is manifest the Respondent considered Olenginski a potential witness on her behalf long before the Board filed a Board Complaint in the Court of Judicial Discipline, and even longer before her trial commenced. Further, as the Respondent had been on the Luzerne County bench since 1992, she would have been well aware that Olenginski had served as the Prothonotary prior to the election of Jill Moran.

In substance, Olenginski's statement, based on her review of Jill Moran's trial testimony, is focused exclusively on countering Moran by positing that since Olenginski never personally had problems with Respondent, or had no knowledge of a "special judge" schedule, or had staff during her tenure that purportedly preferred serving in Respondent's courtroom, Moran's testimony about what she and her staff experienced during Moran's tenure is somehow suspect.

Olenginski's information would have been irrelevant to the Respondent's trial as it is not directed toward any specific incident involving the Respondent. Further, it cannot even qualify as impeachment evidence, which by itself again would not constitute after-discovered evidence, because Olenginski's statement shows that she had no personal knowledge of what occurred during her successor's tenure as Prothonotary and could not refute what Moran observed when Moran was serving as Prothonotary. Olenginski could only testify about what she knew or observed during her own tenure, which could not be used to impeach Moran.

Though Respondent now holds up Olenginski as important to her case, at trial she never called her to the witness stand. Further, had the Respondent been unaware of the information Olenginski now relates in her statement, the Respondent had months to bring Moran's testimony to Olenginski's attention for review in order to obtain it. Moran gave her trial testimony on September 27, 2007. The Respondent did not begin to present her defense until December 10, 2007, and the trial record did not close until January 16, 2008. Nonetheless, though she had ample time to uncover this information, the Respondent failed to act with reasonable diligence.

Most importantly, Olenginski's evidence is not exculpatory and would not have exonerated the Respondent from any misconduct testified about by Board witnesses. It would not change the outcome of the Respondent's trial if a new trial was granted and it fails to meet the legal standard for after-discovered evidence.

D. Sandra M. Brulo

Brulo is the former Luzerne County Deputy Director of Forensic Programs who was charged on February 20, 2009, with felony Obstruction of Justice for corruptly altering a juvenile court file with the intent to impair the file's integrity for use in federal proceedings. On March 17, 2009, Brulo agreed to plead guilty and cooperate in an on-going federal investigation. On

March 26, 2009, Brulo pled guilty to felony Obstruction of Justice before U.S. District Court Judge Edwin M. Kosik. Brulo's sentencing is scheduled for October 5, 2009.

Brulo provides information which, if true, establishes the following:

- From December 1996 through October 2005, Brulo served as the Luzerne County Chief Juvenile Probation Officer.

- As Chief Juvenile Probation Officer, Brulo routinely questioned what she considered inappropriate practices of court offices or departments and her questions were *"not well received by the power structure of the Luzerne County Courthouse."* Brulo does not explain what she considered *"inappropriate practices of court offices or departments."*

- President Judge Conahan completely took over hiring and firing of courthouse employees and department heads were no longer permitted involvement in job interviews of prospective employees. Brulo was never asked if she needed more staff, but instead notified new staff were being hired and to *"find something for them to do."*

- Brulo claims President Judge Conahan conferred with Judge Mark Ciavarella about hiring the following employees: Nina Mantione-Altavilla; Patrick Roman; Jamie Matlowski-MacLunny; Lee Greenberg; Kelly Cesari; Marele Bottley-Tenussen; Patrick Sharkey; Angela DiMetro-Zera; Katie Gaughan; Ashlee Gavenus; Josh Oravic; Colleen Flaherty; Lisa Griglock; and Tom Marino. Brulo explains how these new employees were connected to Judge Ciavarella or Court Administrator William Sharkey as relatives, acquaintances, friends, or friends of former employees. None of these new employees testified at Respondent's trial.

- Brulo claims mostly everyone in the Adult Probation Division was related to Judge Conahan or Court Administrator William Sharkey, who are cousins. At an unknown date, Brulo claims that Paul McGarry, former Director of Probation Services, who Brulo states was demoted to Human Resources Director by Judge Ciavarella, told Brulo that *"in the Hazleton Office, you did not have to go far for a kidney if you needed a kidney transplant."*

- At an unknown date, Brulo claims she was in an elevator with a man (not identified by Brulo) seeking direction to the Juvenile Probation Office for an appointment. Brulo asked with whom he had the appointment and the man said *"the Chief."* Brulo introduced herself as Chief Juvenile Probation Officer and asked the nature of the man's business. He advised he was the new probation officer. Brulo claims she immediately contacted Judge Ciavarella, who told her Judge Conahan hired the man for the Hazleton office and she should *"just train him and find something for him to do,"* though Brulo indicated the Hazleton office was overstaffed.

- In October 2005, Paul McGarry advised Brulo that President Judge Conahan was transferring her to a new position called Deputy Director of Forensic Programs. Brulo claims the new position had *"no job description and virtually no duties."*

- At an unknown date, Brulo questioned Judge Ciavarella about the transfer. Judge Ciavarella told her *"the boss,"* referring to President Judge Conahan, wanted to *"shit can"* her.

- Judge Ciavarella routinely referred to President Judge Conahan as *"the boss."*

- At an unknown date, Judge Ciavarella called Brulo to his chambers, told her *"the boss"* wanted to speak with her, and handed her the telephone. Brulo claims Judge Conahan screamed at her and accused her of being responsible for limiting new admissions to the new Juvenile Detention Center. Judge Conahan said Robert Powell had bills to pay and the limits were limiting admissions. Brulo denied she was responsible for the limits.

- In January 2006, after Brulo applied for a position with Children and Youth Services and copied her letter to Judge Conahan, Judge Conahan called her and told her to *"go away for a month."* Brulo then called Judge Ciavarella about what was going on and he told her she was suspended for a month with pay. At an unknown date two weeks later, Brulo was called to a meeting with Judge Conahan, Judge Ciavarella, and Court Administrator William Sharkey. Judge Conahan told her she could return to work. At some unknown date 3-4 days later, Sharkey stopped by Brulo's office and told her she better watch herself, that she was asking too many questions, and he hoped she learned her lesson.

- At unknown dates, Brulo claims Sharkey would stop by her office occasionally and tell her to be careful about making too many waves. Brulo was also told to stop attending meetings of the Chief Juvenile Probation Officers in State College, Pennsylvania.

- At unknown dates, Brulo claims Judge Ciavarella told her Judge Conahan would never want anything in writing.

- Brulo claims Luzerne County President Judges exercised complete control and authority over courthouse employees.

- Brulo opines that President Judge Conahan had the ultimate power of running the Luzerne County Courthouse and employees seemed to fear losing their jobs or suffering Judge Conahan's wrath and had to keep in line with his wishes.

- Brulo opines Judge Conahan, Judge Ciavarella, and Court Administrator Sharkey operated a "good old boys network" repressive to women.

- At an unknown date, Brulo claims Judge Ciavarella told her she was not *"one of the boys."*

- At unknown dates, Brulo claims Judge Ciavarella continuously asked her to *"dumb down to the boys"* so she would not appear too smart.
- Brulo claims Judge Ciavarella made racing bets with Probation Officer Tom Lavan and sometimes collected on them in the courtroom with people present, including private and public attorneys, and district attorney and court administration staff. Brulo claims Judge Ciavarella would sometimes wear a racing hat (she does not identify if this occurred while on the bench) and Brulo tried to talk to him about the dignity of the court and Judge Ciavarella told her to *"lighten up."*

As with Benzi, Novak, and Olenginski, Brulo's statement, too, fails to meet the legal standard of after-discovered evidence. It is not exculpatory and does not exonerate the Respondent. It neither contradicts Board witness testimony, nor does it corroborate the Respondent's trial defense that Board witnesses conspired to fabricate incidents of judicial misconduct about the Respondent because they were controlled by Judge Conahan. In fact, at trial, the Board demonstrated that many of its witnesses, including Respondent's former employees, Judge Patrick J. Toole, Jr. and witnesses from the Prothonotary, the Luzerne County District Attorney's Office, the Sheriff's Department, and the Public Defender's Office, did not serve at the pleasure of the president judge and the president judge had no authority to hire or fire them.

Brulo, as an employee over which the president judge did have authority to hire or terminate employment, provides no evidence in her statement that any similarly situated employee outside of juvenile probation who testified against the Respondent had been treated as Brulo by Judge Conahan, feared losing their job if they did not do as Judge Conahan wished, or participated in a conspiracy to commit perjury at Respondent's trial to assist Judge Conahan. In fact, to the contrary, at trial, some Board witnesses called on rebuttal were confronted with Respondent's defense posture that they were conspiring to fabricate incidents of judicial

misconduct about her and under the control of Judge Conahan. They were specifically asked whether they were part of any conspiracy to provide false information about the Respondent, whether they had been pressured or coerced by any Luzerne County judges to do so, or offered inducements in the form of county employment or a better position, or salary increase. These rebuttal witnesses denied such claim and included Lisa Tratthen (court reporter), Selyne Youngclaus (former law clerk to Respondent), and Theodore Krohn (former law clerk to Respondent).

While Brulo's information may evidence there was nepotism and cronyism in hiring individuals in the Luzerne County Court system, a male prejudice among Judge Conahan, Judge Ciavarella, and Sharkey toward women (i.e. "the good old boys network"), that Brulo, as Chief Juvenile Probation Officer, was perceived as problematic in terms of facilitating the kickback/"cash-for kids" scheme involving the new juvenile detention center, and that Judge Conahan transferred Brulo to another position as a punishment for being viewed as a liability in carrying out the kickback/"cash-for-kids" scheme, it does not become the equivalent that Judge Conahan controlled Board witnesses and masterminded a conspiracy wherein they agreed to perjure themselves when testifying about the Respondent's conduct. No evidence has ever been presented to support such contention and Brulo's information does nothing to change that.

The fact is that Board trial witnesses have uniformly stood by their testimony about the Respondent's abominable behavior and conduct toward them and others. Beyond those already formally charged by federal authorities, Brulo's information connects no Board witness to her experience with Judge Conahan or to the kickback scheme/"cash-for kids" scandal in Luzerne County, and, most importantly, to the conduct at issue in the Respondent's case. If true, it illustrates Judge Conahan's behavior toward a juvenile probation officer perceived as causing

problems with the facilitation of the kickback scheme/"cash-for kids" scandal, a scheme the Respondent knew nothing about and provided no information about.

CONCLUSION

The Respondent's "new" evidence does not constitute after-discovered evidence which would justify holding additional evidentiary hearings, overturning the Court's Findings of Fact and Conclusions of Law, or the Court's imposed sanction of removal and prohibition on future judicial service.

While the Respondent continues to peddle the notion that she was a "courthouse whistleblower" responsible for uncovering the Luzerne County corruption involving Judge Conahan and Judge Ciavarella being prosecuted by federal authorities, by her own trial testimony she refutes this self-proclaimed title. Respondent testified she contacted the federal authorities *"[n]ot about Judge Conahan specifically. About docketing."* Trial Tr. 3256:5-6, January 15, 2008. Not only was the Respondent not giving information specifically about Judge Conahan, she never testified she ever provided any information about Judge Ciavarella or the kickback scheme involving the new juvenile detention facility. Further, at trial, the Respondent disclaimed she had any problems with Judge Ciavarella.

Nonetheless, since trial, the Respondent's conspiracy defense has continued to evolve as she seemingly abandoned the incredible explanations for the conspiracy she provided at trial and later embraced the theme that it was retaliation for her reaching out to federal authorities and now included Judge Ciavarella. The Respondent, no doubt, overlooked that federal authorities did not commence their investigation into the new juvenile detention center and the role played in it by Judges Conahan and Ciavarella until the summer of 2006, more than two (2) years after the Board received a complaint filed against the Respondent by her former executive secretary,

Susan Weber, and approximately seven (7) months after the Board finished interviewing and/or deposing all Board witnesses and obtained the information used as the basis for its prosecution.

As the Board has said before, it obtained the information about the Respondent's misconduct before the federal investigation ever began. To continually claim that Board witnesses provided such information in retaliation for events that did not yet occur, detailed information about the Respondent's misconduct in all its various manifestations which was then documented in Reports of Interview and/or depositions before the summer of 2006, and before the Respondent's trial in 2007 and 2008, is not only misleading, it is absurd.

It must further be noted that no testimony given at Petitioner's trial by Judge Conahan, Judge Ciavarella (rebuttal witness only), William Sharkey, or Jill Moran, about the Respondent, has been proven false. In fact, some of Moran's testimony was corroborated by a court transcript of a specific hearing in which she participated before Petitioner. Judge Ciavarella's very limited rebuttal testimony, in part, simply dealt with the physical structure and condition of the Penn Place court facility at the time Petitioner was assigned to it and his experience handling the same court assignment Petitioner opined was so onerous.

Additionally, while the Respondent continues to devalue evidence provided by numerous Board witnesses not possessing lofty title or position in the Luzerne County Court system, giving the false impression that Judge Conahan, Judge Ciavarella, William Sharkey, and Jill Moran were somehow more important, "key," or "principle" to the Board's prosecution, or that the Board *"built their case around these very then (sic) powerful, affluent, well respected people"* (Tr. 51:9-10, May 13, 2009), she cannot negate the overwhelming mountain of evidence actually provided by the twenty-seven (27) other witnesses who gave much more detailed testimony about the Respondent's conduct, such witnesses including the Respondent's former personal staff.

Arguendo, even if the evidence Respondent proffers from Benzi, Novak, Olenginski, and

Brulo, was considered after-discovered evidence, it would not, does not, and cannot obscure that mountain of credible and corroborated evidence from these twenty-seven (27) witnesses, exculpate the Respondent, or change the outcome of her trial. The criminal conduct of Judge Conahan, Judge Ciavarella, and William Sharkey is a world independent of the Respondent's personal behavior and conduct, the heart of the Board's charges against her, which included having a young law clerk/tipstaff, Judith Flaherty, scrubbing the Respondent's kitchen floor on hands and knees and becoming a virtual household servant while the Luzerne County taxpayers paid the tab. Finally, the Board notes the Respondent's reference at the May 13, 2009, hearing, through her counsel, to an anonymous complaint filed with the Board against Judge Conahan (See Tr. 68-70, May 13, 2009). Respondent further raises this issue in her Brief (Page 26), speculating about what the Board may have done with such complaint.

First, as the Respondent is well aware, all matters before the Board are made confidential by constitutional mandate. Pa.Const. art. V, §18(a)(8). Just as the Board could not parade before the public any complaints filed against the Respondent that did not become court cases unless she waived confidentiality, the Board can discuss nothing about matters possibly filed against other judges, including Judge Conahan. Nevertheless, with complete disregard for this confidentiality, the Respondent places such a matter before the public.

In a blatant maneuver to "muddy the water" and manipulate public opinion to believe the Respondent is somehow a victim and not the perpetrator of misconduct in her own right, the Respondent injects such information to change the subject from Respondent's case and her conduct and the Court's task of determining whether she has presented what legally constitutes after-discovered evidence, to the subject of what the Board constitutionally would be prohibited from discussing and which, as the Respondent claims she did not file any complaint, would have no relation to the Respondent or her personal conduct toward those appearing before her in court,

working in her courtroom, or serving on her personal staff.

In light of Respondent's speculation that the Board did nothing with the referenced complaint against Judge Conahan, the Board has secured a waiver of confidentiality from former Judge Conahan. The Board avers the following regarding that complaint (**Board Exhibit A – Second Anonymous Complaint Received September 28, 2006**):

1) An anonymous complaint was initially received by the Judicial Conduct Board, regarding (then Judge) Michael Conahan, toward the end of the Board's investigation against Ann H. Lokuta. The allegations in this anonymous complaint focused on nepotism in the Luzerne County Courthouse.

2) The Judicial Conduct Board initiated an investigation of the aforesaid complaint.

3) A second anonymous complaint was received by the Judicial Conduct Board, regarding former Judge Michael Conahan, which included, *inter alia*, allegations of case-fixing.

4) This complaint was received at the completion of the Board's investigation of the Respondent and immediately prior to the filing of the Board Complaint at *In re Ann H. Lokuta*, 3 JD 2006.

5) In accordance with the well-established procedures and practices of the Judicial Conduct Board, the second anonymous complaint referred to in paragraph 3 was forwarded to the United States Attorney's Office, Middle District of Pennsylvania, after preliminary investigation.

6) The United States Attorney's Office undertook and continued its investigation of Conahan, et al. Joseph A. Massa, Jr., Chief Counsel of the Judicial Conduct Board, testified before the federal investigative grand jury, on behalf of the United States Attorney's Office.

The above practice was in accord with the Board's policy and practice when it receives allegations of criminal conduct of a judicial officer. The matter regarding former Judge Conahan remains deferred pending completion of the ongoing criminal prosecution of former Judges Conahan and Ciavarella, who were indicted by a federal grand jury on September 9, 2009.

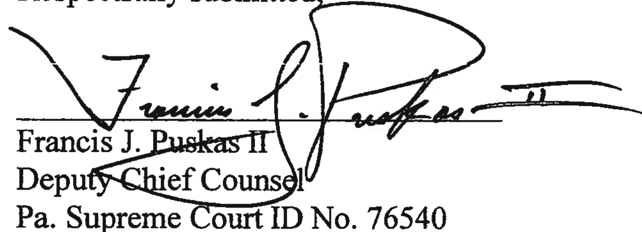
Assistant United States Attorney Gordon Zubrod, according to news reports published by the Associated Press and others, acknowledged that the Board had forwarded the complaint to federal prosecutors. *"We got that early on in the case,"* Zubrod told the Associated Press on

September 9, 2009. *"They were very cooperative with us. There was no hiding the ball."* **(Board Exhibit B – The Associated Press, *Report: Pa. board told about judicial corruption*, September 9, 2009); (Board Exhibit C – Dave Janoski, *Complaint says chief counsel for Judicial Conduct Board knew of judge's ties in '06*, September 10, 2009).**

The only relevance of the anonymous complaint filed against former Judge Conahan to Respondent's matter is in the context of the substance (the allegations) as any of them have born out in the federal prosecutions, namely the kickback scheme/"cash-for-kids" scandal, and how the Respondent can qualify anything from that scandal as after-discovered evidence as per the Supreme Court's remand order. Thus far, the Board maintains the Respondent has failed to make any connection that would satisfy this legal standard.

Therefore, for all the above stated reasons, this Honorable Court should find the Respondent's evidence does not qualify as after-discovered evidence, does not merit the granting of further evidentiary hearings, and does not affect the existing determination that the Respondent committed judicial misconduct and was appropriately removed from office.

Respectfully submitted,



DATE: September 10, 2009

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Pa. Supreme Court ID No. 76540

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COMMONWEALTH OF PENNSYLVANIA

COURT OF JUDICIAL DISCIPLINE

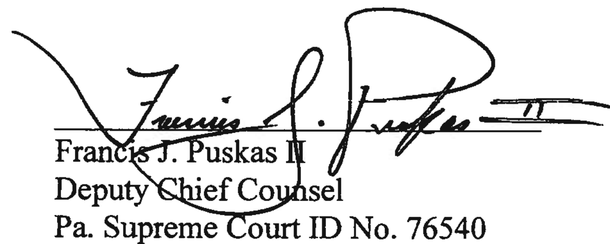
In re:

Ann H. Lokuta,	:	
Judge of the Court of Common Pleas;	:	
Eleventh Judicial District	:	3 JD 06
Luzerne County	:	
	:	

VERIFICATION

I, Francis J. Puskas II, Deputy Chief Counsel to the Commonwealth of Pennsylvania Judicial Conduct Board, verify that I am authorized to make this verification on behalf of the Board and that the statements made in the foregoing Judicial Conduct Board's Brief are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa. Cons. Stat. Ann. §4904, relating to unsworn falsification to authorities.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Judicial Conduct Board Brief upon the persons and in the manner indicated below which satisfies the requirements of Rule 122 of the Court of Judicial Discipline Rules of Procedure:

Service by first class mail addressed as follows:

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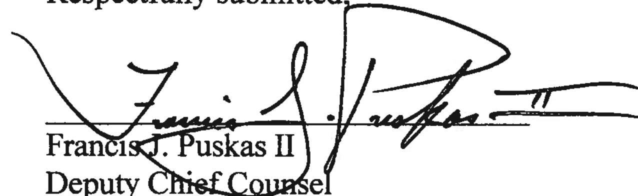
Respectfully submitted,



DATE: September 10, 2009

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