

MAILING ADDRESS OF COURT:

Chief Clerk
Commonwealth Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 2100
P.O. Box 69185
Harrisburg, PA 17106-9185

Submitted on
10/25/2016

RE: Steven Burda
(Your Name Petitioner)

v. PA OOR and
Judicial Conduct Board
(Name of Government Agency/Board/Office/Department)

Dear Chief Clerk:

Enclosed are the original and one copy of the petition for review I am filing as Petitioner (pro se – proceeding without a lawyer) and a certificate of service showing I have sent copies of my petition for review to (1) the government agency/board/office/department that entered the order that I am appealing, (2) the Attorney General of Pennsylvania, and (3) any other party to the proceedings conducted by the government agency/board/office/department.

Also enclosed is the required filing fee, made payable to the Commonwealth Court of Pennsylvania OR a completed and signed Application for Leave to Proceed *In Forma Pauperis* (IFP) form.

Sincerely,

Steven Burda
Petitioner Pro Se (proceeding without a lawyer)

NOTE: If the Petitioner is a corporation, it may NOT proceed *pro se*. A corporation MUST be represented by an attorney in court. See *Walacavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

NOTE: You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on the top of this page, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated on Page 4.

COMMONWEALTH COURT OF PENNSYLVANIA

Steven Burda

(Your Name)

Petitioner

Docket No. _____ C.D. 2016

v. PA OOR and

Agency/Board/Office/Department

Judicial Conduct Board

Decision No. 2016-1713

(Name of Government Agency/Board/Office/Department)

Respondent

(10/13/2016) PA OOR

PETITION FOR REVIEW
(Appellate Jurisdiction)

1. This court has appellate jurisdiction over this matter by reason of Section 763(a)(1) of the Judicial Code, 42 Pa. C.S. §763(a)(1).

2. On October 13, 2016, the PA Office of Open Records
(date of decision) (Name of Government Agency/Board/Office/Department)
entered an order at Decision No. 2016-1713.

3. The order of the government agency/board/office/department should be reversed because:

(Use these lines and another piece of paper, if needed, to explain specifically why you believe the order is wrong.)

PA OOR had improperly and
erroneously stated that "The Judicial
Conduct Board is a judicial agency."
This is incorrect. In fact, JCB is
an independant board of this Commonwealth
and 42 Pa C.S. §2101 does not state that
Judicial Conduct Board is a judicial Agency.
(see Records of this case.)

4. WHEREFORE, Petitioner prays that this Court review and set aside the order and grant relief as may be just and proper.

Steven Burda

(Your signature)

Steven Burda

(Your printed name)

1171 Thrush Lane

(Your street address)

Audubon, PA 19403

(City, State, and Zip Code)

(Your telephone number)

10/25/2016

(Today's date)

NOTICE TO PARTICIPATE (Pa. R.A.P. 1513(d))

[This notice is for any other party to the proceedings conducted by the government agency/board/office/department who is not named as a respondent.

You must send a copy of the entire Petition For Review (pages 1-4) to all such other parties.]

You have not been named as a respondent; however, you were a party before the government agency/board/office/department whose decision is sought to be reviewed.

If you intend to participate in this proceeding in the Commonwealth Court, you must serve and file a Notice of or Application for Intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedures within 30 days.

CERTIFICATE OF SERVICE

I certify that I sent by certified mail, return receipt requested, a true and correct copy of the Petition for Review (pages 1-4) to these parties:

✓ (1) Government Agency/Board/Office/Department (Name and address):
PA OOR (Office of Open Records)
400 North Street 4th floor
Harrisburg, PA 17120-0225

✓ (2) Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

✓ (3) Other party, if any, to the proceedings conducted by the government agency/board/office/department who is not named as a respondent (Name and address):
JCB
Judicial Conduct Board Suite 3500
601 Commonwealth Ave. PO Box 62525
Harrisburg PA 17120-0901

(Attach additional pages as needed for additional parties.)

Steven Burda
(Your signature)

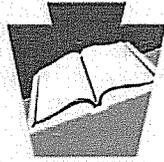
Steven Burda
(Your printed name)

1171 Thrush Lane
(Your street address)

Audubon PA 19403
(City, State, and Zip Code)

(Your telephone number)
10/25/2016
(Today's date)

NOTE: You MUST file the original and one copy of the entire Petition for Review (pages 1-4) with the Chief Clerk of the Court at the mailing address on Page 1 of this form, AND you MUST send copies of the entire Petition for Review (pages 1-4) to all other parties as indicated above.



pennsylvania
 OFFICE OF OPEN RECORDS
FINAL DETERMINATION

IN THE MATTER OF	:
	:
STEVEN BURDA,	:
Requester	:
	:
v.	:
	:
	:
PENNSYLVANIA JUDICIAL	:
CONDUCT BOARD,	:
Respondent	:
	:
	:

Docket No.: AP 2016-1713

On or about September 28, 2016, Steven Burda (“Requester”) submitted a request (“Request”) to the Judicial Conduct Board of Pennsylvania (“Board”) pursuant to the Right-to-Know Law (“RTKL”), 65 P.S. §§ 67.101 *et seq.* The Board timely responded on October 5, 2016, denying the Request because the Board is a judicial agency. On October 12, 2016, Requester appealed to the Office of Open Records (“OOR”).

The Board is a judicial agency that is not subject to the jurisdiction of the OOR. *See* 65 P.S. § 67.102; 65 P.S. § 67.503(b). The OOR does not have jurisdiction to hear appeals related to requests for records of judicial agencies. *See* 65 P.S. § 67.503(b). Instead, appeals involving a judicial agency are to be heard by an appeals officer designated by the judicial agency. *Id.* (“A judicial agency shall designate an appeals officer to hear appeals under Chapter 11”). The Appeal is hereby transferred to the Appeals Officer for the Board. A copy of this final order and the appeal filed by the Requester will be sent to Appeals Officer for the Board.

For the foregoing reasons, Requester's appeal is **transferred** to Appeals Officer for the Board. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, either party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.¹ This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

FINAL DETERMINATION ISSUED AND MAILED: October 13, 2016

/s/ Kyle Applegate

Appeals Officer
Kyle Applegate

Sent to: Requester; Elizabeth Flaherty, Esq. Appeals Officer, Judicial Conduct Board of Pennsylvania

¹ *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).



pennsylvania
OFFICE OF OPEN RECORDS

Sent Via E-Mail Only

October 25, 2016

Steven Burda
1171 Thrush Lane
Audubon, PA 19403
Steven.burda.mba@gmail.com

Re: Petition for Reconsideration
OOR AP 2016-1713
Steven Burda v. Judicial Conduct Board

Dear Mr. Burda:

The Office of Open Records is in receipt of your petition for reconsideration filed to the above-referenced docket number. The Judicial Conduct Board is a judicial agency. 42 Pa.C.S. § 2101. A judicial agency is not subject to the jurisdiction of the OOR. 65 P.S. § 67.503(b). Accordingly, we hereby deny your petition for reconsideration.

Respectfully,

/s/ Charles Rees Brown

Charles Rees Brown
Chief Counsel

cc: Elizabeth Flaherty, Esquire
Appeals Officer
Judicial Conduct Board of Pa.



Steven Burda <steven.burda.mba@gmail.com>

PETITION FOR RECONSIDERATION: 2016-1713 Burda v. Judicial Conduct Board

Steven Burda <steven.burda.mba@gmail.com>

Tue, Oct 25, 2016 at 1:35 PM

To: "Shuman, Carolyn" <carshuman@pa.gov>, openrecords <openrecords@pa.gov>

Cc: "contactus@jcbpa.org" <contactus@jcbpa.org>, "Brown, Charles (OOR)" <charlebrow@pa.gov>, Steven Burda <steven.burda.mba@gmail.com>, info@attorneygeneral.gov

Bcc: "Johnson, Jeffrey A." <jjohnson@attorneygeneral.gov>

October 25, 2016

Hello PA OOR and JCB -

I am in receipt of today's e-mail deficient response that denied my reconsideration, lacking any legal standing.

1) Please mail me a copy to my home address. It will be appealed and challenged further.

2) You **erroneously** stated: "*The Judicial Conduct Board is a judicial agency. 42 Pa.C.S. § 2101*" In checking 42 Pa.C.S. § 2101, it clearly does **not** identify *The Judicial Conduct Board as a judicial agency*. As such, this false statement is made up by PA OOR, as JCB is an **independent board**, and **not** a *judicial agency*. Specifically, 42 Pa.C.S. § 2101 only says the following:

§ 2101. Judicial Conduct Board.

(a) **General rule.**--In accordance with section 18 of Article V of the Constitution of Pennsylvania, the Judicial Conduct Board shall be an **independent board** within the Judicial Branch and shall consist of 12 persons selected as provided in this subchapter.

(b) **Seal.**--The Judicial Conduct Board shall have a seal engraved with its name and such other inscription as may be specified by board rule. A facsimile or preprinted seal may be used for all purposes in lieu of the original seal.

Had 42 Pa.C.S. § 2101 stated that "The Judicial Conduct Board is a judicial agency" there would be no challenge, but the legal authority does **not** say that "The Judicial Conduct Board is a judicial agency" as the statute clearly states that JCB is an **independent board**.

3) In my reconsideration request, I clearly provided reasons, rationale and legal authority why JCB is not a "judicial agency" and I see it was all ignored.

4) Clearly, PA OOR has erred. An appeal will follow and media will be contacted.

- Steven Burda
TransparencyPA
1171 Thrush Lane
Audubon PA 19403

cc: Judicial Conduct Board (JCB) of Pennsylvania

On Tue, Oct 25, 2016 at 11:57 AM, Shuman, Carolyn <carshuman@pa.gov> wrote:

Please see attached correspondence on behalf of the Office of Open Records.

Thank you.



Carolyn Shuman

Administrative Officer
Office of Open Records
Commonwealth Keystone Building
400 North St., Plaza Level

Harrisburg, PA 17120-0225

(717) 346-9903 | <http://openrecords.pa.gov>

carshuman@pa.gov | @OpenRecordsPA

4 attachments



RECON - Deny_Burda v. Judicial Conduct Board 2016-1713.pdf
84K



Title 42 - PA General Assembly CHAPTER 21 JCB & Commissions.pdf
521K



Burda, Steven 642.2016.pdf
982K



RTK - Memorandum of Law and Legal Authority - JCB - Steven Burda.pdf
27K

I submit this RTKL "Memorandum of Law" provision and with legal authority:

"...all records in the possession of **Commonwealth** and local agencies are **presumed public.**" (*emphasis added*) Section 305(a) of the RTKL, 65 P.S. §67.305(a).

"Pursuant to the presumption of openness, **Commonwealth** and local agencies are **required** to provide access to **any** record to which an exemption does **not** apply. (*emphasis added*) Section 701 of the RTKL, 65 P.S. §67.701." See case law at *Com. v. Upshur*, 924 A.2d 642 (Pa. 2007); *Stenger v. Lehigh Valley Hosp. Ctr.*, 554 A.2d 954 (Pa. Super. 1989).

There are **no** exemptions for Judicial Conduct Board ("JCB"). Even if JCB is not a local agency, JCB is part of **Commonwealth** and the above citation to legal authority is appropriate, and controlling to the RTKL purpose and intent. (*emphasis added*)

Moreover, Section 506(c) of the RTKL authorizes agencies or Commonwealth to exercise their discretion "to make **any** otherwise exempt **record accessible** for inspection and copying." 65 P.S. §67.506(c). As such, JCB has the legal authority and responsibility to the public to fulfill the RTK request.

Although it is anticipated that a reply may be that the "judicial agency" is defined as, "[a] court of the Commonwealth or any other entity or office of the unified judicial system." Section 102 of the RTKL, 65P.S. §67.102 -- JCB is **not** a court of the Commonwealth but an **independent** board at the Commonwealth, is **not** an entity or office of the unified judicial system, but again, an independent board, and *independent* from judiciary. JCB are not judiciary as they are a Board that oversees the judiciary/Judges. JCB are not judges and are not required to be lawyers.

The RTKL is **designed** to afford **greater access** than its predecessor, resulting in "a dramatic expansion of the public's access to government documents." *Levy v. Senate of Pa.*, 65 A.3d 361, 381 (Pa. 2013).

Finally, 42 Pa.C.S. §2101 clearly does **not** identify The Judicial Conduct Board as a judicial agency, as JCB is an **independent board**, and is not a judicial agency. *

This submission of the Memorandum of Law is proper. See 65 P.S. § 67.1102(b)(3) (stating that "the appeals officer shall rule on procedural matters on the basis of justice, fairness, and the expeditious resolution of the dispute").

Steven Burda