

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

President Judge Farley Toothman :  
Court of Common Pleas : 1 JD 2020  
13<sup>th</sup> Judicial District :  
Greene County :

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

MAY 14 2021

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**JUDICIAL CONDUCT BOARD'S BRIEF IN SUPPORT OF  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On May 14, 2020, the Judicial Conduct Board (Board) filed a Board Complaint against Judge Farley Toothman (Respondent). On June 22, 2020, Respondent filed an Omnibus Verified Pretrial Motion and Request for Entry into the Judicial Diversion Program. On July 2, 2020, the Board file objections to Respondent's request for diversion and by order dated August 20, 2020, this Court denied Respondent's request. Thereafter both parties filed Pretrial Memoranda. Following a Pretrial Conference on March 10, 2021, the parties filed Joint Stipulations in Lieu of Trial. The following is the Board's brief in support of its proposed findings of fact and conclusions of law.

**I. Proposed Findings of Fact and Discussion**

**Christy McCarty Matter**

Without any regard for the applicable law or respect for the Constitution, Respondent deprived Christy McCarty of her liberty for 25 days in order to punish her for upsetting his law clerk. Respondent accomplished his objective with complete

disregard for McCarty's constitutional rights, the Code of Judicial Conduct and the Disrepute Clause of the Constitution of the Commonwealth of Pennsylvania.

**Factual Background:**

On September 6, 2017, McCarty encountered Respondent's law clerk at a local Sunoco store where she asked the law clerk about her activity in the store. (Joint Stipulation 17.) The law clerk interpreted McCarty's words as an accusation of retail theft. (Joint Stipulation 18.) After speaking to the two clerks in the store about McCarty's question, the law clerk reported the incident to Respondent. (Joint Stipulations 18 and 20.) Upon learning of the incident, Respondent launched his own independent investigation including, (1) questioning the two store clerks; (2) calling the police; and (3) directing a court employee to provide him with all of McCarty's court records. (Joint Stipulations 27, 32, 34, and 42.) Through his investigation, Respondent learned that McCarty had, for several months, failed to make a \$10 monthly payment on a 2010 misdemeanor theft conviction from Fayette County. (Joint Stipulations 60 and 62.) On September 7, 2017, with the information he had gathered about McCarty, Respondent directed a probation officer to find McCarty and have her report to his courtroom. (Joint Stipulation 49.)

On September 7, 2017, McCarty willingly appeared in Respondent's courtroom in spite of the fact that she had been given no notice of the scheduling or nature of the proceeding. (Joint Stipulations 50 and 53.) Respondent did not inform McCarty of the nature of the proceeding, that her liberty was in jeopardy, or offer her an opportunity to secure and consult with counsel. (Joint Exhibit A.) Respondent convened the proceeding telling McCarty, "The Court by its own motion is considering the matter at file 72 of 2010, it is the Commonwealth versus Christy L. McCarty."

(Joint Exhibit A at 3:14-15.) During the course of the brief proceeding Respondent told McCarty that she had failed to make required payments in the 2010 case since "last year", a statement that was verifiably incorrect. (Joint Stipulations 58 and 62.) Although Respondent claimed to be considering McCarty's failure to make court payments, he made no effort to determine if McCarty had a present ability to make the payments. (Joint Stipulation 63.) In spite of the fact that McCarty did not have counsel representing her, Respondent questioned her about new charges pending against her, allowing her to incriminate herself. (Joint Exhibit A at 5:24-6:3.) At the conclusion of the proceeding, without any evidence having been presented Respondent found McCarty in civil contempt and commit her to the county prison until October 2, 2017. (Joint Stipulations 55 and 64.) Respondent failed to give McCarty any means to purge herself of the contempt determination and has since stated that "indirect criminal contempt was more appropriate for the context." (Joint Stipulations 65 and 66.)

Immediately after sending McCarty to prison, Respondent contacted the owner of the Sunoco store, Mr. Pecjak, and asked him to come to his chambers. During the meeting, Respondent told Pecjak that McCarty was "not a stable person" and provided him with a copy of her criminal history. (Joint Stipulations 69 and 74.) Following Respondent's meeting with Pecjak, the store clerks received written reprimands from their boss for their conduct involving Respondent and his law clerk. (Joint Stipulation 76.)

On October 2, 2017, rather than simply releasing McCarty from prison at the end of her contempt sentence, Respondent ordered her back to his courtroom. (Joint Stipulation 78.) During the proceeding, Respondent asked McCarty, "Yeah, well,

don't you think I should order you away from the Sunoco?" McCarty asked why he would do that and proceeded to explain that she had done nothing at the Sunoco store to "upset" his law clerk other than to approach and speak to her. Respondent did not deny the connection McCarty made between the incident with his law clerk and her subsequent prison sentence. Instead, he interrupted her announcing that she was "in compliance" and released her from prison. (Joint Stipulation 80.) In fact, McCarty had done nothing during her prison stay to bring herself into compliance; however, Respondent had achieved the result he had set out to accomplish: punish McCarty for daring to question the conduct of his law clerk.

**Violations of the Code of Judicial Conduct:**

**Canon 1, Rule 1.1. Compliance with the Law. A judge shall comply with the law, including the Code of Judicial Conduct.**

By failing to comply with the law governing civil contempt proceedings and by violating McCarty's constitutional rights to due process and counsel, Respondent violated Rule 1.1 of the Code of Judicial Conduct which requires judges to comply with the law. Respondent failed to follow civil contempt procedures when he incarcerated McCarty for failing to make \$10 payments without determining if she had the ability to pay, and by failing to set conditions for purging the contempt. *Barratt v. Barratt*, 368 A.2d 616, 620 (Pa. 1977). (Father improperly sentenced to prison for failing to make child support payments.) Furthermore, by incarcerating McCarty without giving her the ability to purge the contempt, Respondent essentially converted the matter to that of a criminal contempt proceeding while failing to provide McCarty with due process and counsel. *Commonwealth v. Brumbaugh*, 932 A.2d 108, 110 (Pa. Super. 2007). Similar to this Court's finding in *In re Younge*, 2 JD 2019 (Opinion and Order dated December 1, 2020), Respondent's failure to

comply with the law in the McCarty contempt proceeding constitutes a violation of Rule 1.1 of the Code of Judicial Conduct.

**Canon 1, Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**

From the moment he learned of McCarty's communication with his law clerk, Respondent failed to conduct himself in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and failed to avoid the appearance of impropriety as required by Rule 1.2 of the Code of Judicial Conduct. Respondent conducted his investigation and prosecution of McCarty in full view of the public: parading his entourage to the store, calling the police, ordering one court employee to gather documents and files pertaining to McCarty and ordering another to track her down. Furthermore, he made no effort to conceal his lack of impartiality regarding McCarty: asking her if she was going to be a "good girl" and sarcastically telling her she was not at fault for upsetting his law clerk. This Court had held that rude and threatening conduct off the bench constitutes a violation of Rule 1.2. *In re Maruszczak*, 1 JD 2018 (Opinion dated January 9, 2019) (Judge treated individuals campaigning for his opponent rudely and threatened to call law enforcement to report an alleged crime by one of the individuals). Respondent's conduct, while similar to that of Maruszczak, is arguably more egregious because he did not *threaten* to call law enforcement; instead, he by-passed law enforcement entirely and incarcerated McCarty.

**Canon 2, Rule 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.**

Respondent failed to treat McCarty in a fair and impartial manner in violation of Rule 2.2 of the Code of Judicial Conduct. After acting as the investigating officer

and prosecutor, it was impossible for Respondent to conduct a fair and impartial proceeding. His claim that he sent McCarty to prison because she had failed to make a monthly \$10 payment is a ruse offered to hide his lack of impartiality. Had his sole concern been the delinquent payments, he could have alerted the prosecutor's office to the potential problem, thereby allowing the proper process and procedure to take place. The meeting with Pecjak provides strong evidence that Respondent did not send McCarty to prison because of her missed payments. Pecjak had no connection to McCarty's prior court matters or payment obligation, leaving Respondent with no legitimate reason to tell him about McCarty's history or character. Instead, the meeting with Pecjak was the result of Respondent's irritation with McCarty and highlights his lack of impartiality. Perhaps the most direct evidence of Respondent's true purpose for sending McCarty to prison and consequent lack of impartiality is found in his own words when, on October 2, 2017, he initiated the discussion about the incident at the Sunoco store, asking McCarty if he should order her to stay away from the store. The store had no connection to McCarty's failure to make a monthly \$10 payment or to any part of her criminal history. The only connection between McCarty and the Sunoco store was her contact with Respondent's law clerk.

**Canon 2, Rule 2.9(C) Ex Parte Communications. A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.**

By conducting his own investigation into the incident at the Sunoco store and into McCarty's criminal history, Respondent violated Rule 2.9(C) of the Code of Judicial Conduct. The rule specifically prohibits such conduct stating, in pertinent part, "[a] judge shall not investigate facts in a matter independently [.]" While Respondent's investigation of the Sunoco store incident did not result in any arrests,

both store clerks received written reprimands from their employer. (Joint Stipulations 36 and 76.) The consequences of Respondent's investigation into McCarty's criminal history were far worse. For having done nothing more than miss a few \$10 payments, McCarty was deprived of her liberty for 25 days in a proceeding in which Respondent now admits he violated her constitutional rights to counsel and due process. (Joint Stipulations 57 and 65.)

**Canon 2, Rule 2.5(A) Competence, Diligence and Cooperation. A judge shall perform judicial and administrative duties competently and diligently.**

Respondent, in an effort to defend his conduct, has admitted to violating Rule 2.5(A) which requires judges to be competent in the law. Incredibly, Respondent has attempted to excuse his conduct by telling this Court that he lacked the education and skills necessary to fulfill his duties as a judge. Respondent explained that when he was appointed to the bench in 2009 he did not have the opportunity to go to "AOPC Judge School" and "did not have significant courtroom experience." (Joint Stipulation 5 and Respondent's Omnibus Verified Pretrial Motion, paragraph 2.) Additionally, Respondent placed blame on the Pennsylvania Supreme Court and the judicial disciplinary system for having failed him by not requiring continuing judicial education until 2017 and being slow to develop educational and mentorship opportunities for the judiciary. (Respondent's Omnibus Verified Pretrial Motion, paragraphs 4-6.) These excuses are both audacious and meritless in light of Rule 2.5(A) of the Code of Judicial Conduct which requires judges to be competent in the law and to seek education where necessary. Lest there be any misunderstanding on the part of the judiciary of its obligation to be competence in the law, comment [1] explains the rule thusly:

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

Comment [2] makes it clear that the responsibility to become competent and maintain competency lies with each jurist.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

While the Board has not charged Respondent with a violation of Rule 2.5(A) regarding his conduct in the McCarty matter, this Court has, in the past, found violations of uncharged rules where it has received clear and convincing evidence of the violations during the course of the litigation. See *In re Berry*, 979 A.2d 991 (Pa.Ct.Jud.Disc. 2009), see also *In re Lokuta*, 964 A.2d 988 (Pa.Ct.Jud.Disc. 2005), and *In re Berkheimer*, 877 A.2d 579 (Pa.Ct.Jud.Disc. 2005) (All cases in which this Court found additional, uncharged violations based upon the evidence presented in support of charged violations.) In light of Respondent's averments that he came to the bench without significant courtroom experience, did not receive proper training when he became a judge and was unable to find training during his ten years on the bench, there is clear and convincing evidence that Respondent violated Rule 2.5(A) of the Code of Judicial Conduct.

**Violations of the Constitution:**

**Article V, § 18(d)(1) - A justice, judge, or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which . . . brings the judicial office into disrepute[.]**

Respondent's misconduct which resulted in the deprivation of McCarty's liberty for 25 days was so extreme that it constituted a violation of the Disrepute Clause of the Constitution. This Court has determined that the test for a violation of the



Disrepute Clause requires a determination that the judge's misconduct was so extreme as to have brought disrepute upon the entire judiciary. *In re Cicchetti*, 743 A.2d 431, 443 (Pa. 2000). The standard to be applied involves an analysis of the "reasonable expectations of the public of a judicial officer's conduct." *In re Carney*, 79 A.3d 490, 494 (Pa. 2013). "The analysis of the reasonable expectations of the public integrates the principle that a respondent judge represents the judicial office to members of the public and therefore, his or her misconduct reflects back on the entire judiciary." *In re Younge*, 2 JD 2019 at 118 (Opinion and Order dated December 1, 2020) (citing *In re Berkhimer*, 930 A.2d 1255, 1258-59 (Pa. 2007)).

No member of the public expects a judge to incarcerate an individual for having spoken to a judge's law clerk, even assuming the conversation included questions that upset the law clerk. Even if the public were to believe Respondent's claim that he incarcerated McCarty for having failed to make some \$10 court payments, it cannot be said that the public expects a judge to violate the constitutional rights of the defendant in order to punish her for failing to make those payments. Rather, the public expects that a judge will respect the Constitution and understand and obey the substantive and procedural laws relevant to any person or case over which the judge presides. Respondent's extreme and willful misconduct in the McCarty matter falls far short of the expectations of the public and, consequently brings the judicial office into disrepute.

### **Waynette Pelligrini Matter**

In order to force Waynette Pelligrini to sign a confidentiality statement, Respondent intentionally violated the Code of Judicial Conduct by posting Pelligrini's union grievance on a public bulletin board.

**Factual Background:**

In 2017, Waynette Pelligrini became employed in Greene County as a custodian, a position represented by a labor union. (Joint Stipulations 85 and 86.) During that same time period, Respondent wanted Pellegrini and other county maintenance employees to sign a confidentiality statement. In January 2018, Pelligrini was unwilling to sign the statement. (Joint Stipulations 83, 87 and 88.)

On January 24, 2018, Pelligrini filed a grievance through her union alleging that union work was being done in Respondent's chambers by non-union employees in violation of the union contract. (Joint Stipulation 91.) On January 28, 2018, Respondent made a copy of Pelligrini's grievance on bright orange paper and posted it on a public bulletin board in the courthouse. (Joint Stipulation 92.) Prior to posting the grievance, Respondent made no effort to conceal Pelligrini's name or personal telephone number from public sight. (Joint Stipulation 92.) On January 29, 2018, the Greene County Human Resources director instructed Respondent to remove the grievance from the bulletin board. (Joint Stipulations 93 to 96.) Thereafter, several Greene County officials met with Respondent to discuss his posting of the grievance. (Joint Stipulation 99.) The officials told Respondent that his act of posting the grievance on the bulletin might be viewed as retaliation against Pelligrini for filing the grievance. (Joint Stipulation 100.) Respondent told the officials, "You think I'm going to retaliate? You're damned right I'm going to retaliate!" (Joint Stipulation 101.) Respondent admitted that he posted the grievance because he thought the grievance was frivolous and was filed in response to his demand that Pelligrini sign a confidentiality statement. (Joint Stipulation 102.) Shortly after Respondent posted

Pelligrini's grievance, he accomplished what he set out to do: force Pelligrini to sign the confidentiality statement. (Joint Stipulation 105.)

In September 2018, the Pennsylvania State Court Administrator notified Pelligrini that Respondent's act of posting her grievance had been investigated and had been determined to be "inappropriate." The State Court Administrator informed Pelligrini that he had recommended that "remedial and pro-active measures be taken to . . . ensure all court employees and visitors are treated in a dignified, civil, respectful, and non-discriminatory manner." (Joint Stipulation 103 and Joint Exhibit J.)

**Violations of the Code of Judicial Conduct:**

**Canon 1, Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**

Respondent violated Rule 1.2 when he failed to conduct himself in a manner that promotes public confidence in the integrity of the judiciary and failed to avoid the appearance of impropriety by posting Pelligrini's grievance in order to retaliate against her. Respondent admitted to Greene County officials that he posted Pelligrini's union grievance in order to retaliate against her for filing it. Whether he believed the grievance was frivolous or was filed with some ulterior motive is irrelevant to this inquiry. What is relevant is Respondent's abject failure to conduct himself with integrity and to avoid the appearance of impropriety. Just as shocking is Respondent's complete lack of humility evidenced by his brazen admission to the Greene County officials when he was confronted: "You're damned right I'm going to retaliate!"

In *In re Maruszczak*, 1 JD 2018 (Opinion dated January 9, 2019) this Court found that aggressive judicial bullying constituted a violation of Rule 1.2 of the Rules Governing Standards of Conduct of Magisterial District Judges (RGSCMDJ) where the jurist threatened to take improper action against an individual.<sup>1</sup> In the case now before this Court, Respondent took the misconduct one step further by *taking* action against Pelligrini, rather than simply *threatening* to take action. Furthermore, Respondent's conduct was intended to involve the public; he posted the grievance on a public bulletin board. Having admitted to committing an act of retaliation with the intent to draw the public's attention to it, Respondent had provided this Court with clear and convincing evidence of a violation of Rule 1.2.

**Canon 2, Rule 2.8(B) Decorum, Demeanor, and Communication with Jurors. A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity[.]**

Respondent violated Rule 2.8(B) when he failed to treat Pelligrini with dignity by posting her union grievance on a public bulletin board. Respondent's admission to the Greene County officials, that the purpose of posting the grievance was to retaliate against Pelligrini, constitutes clear and convincing evidence that he intentionally failed to treat her with patience and dignity. However, should this Court seek further evidence to support a determination of a violation of Rule 2.8(B), it only need look to the written decision of the Pennsylvania State Court Administrator who stated that posting the grievance was improper and recommended that remedial and

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<sup>1</sup> Rule 1.2 of the RGSCMDJ applies to Magisterial District Judges, but otherwise mirrors Rule 1.2 of the Code of Judicial Conduct.

pro-active measures be taken to “ensure all court employees . . . are treated in a dignified . . . manner.” (Exhibit J.)

**Kiger v. Depetris Matter**

While presiding over the matter of *Kiger v. Depetris*, Respondent ignored the applicable law in order to reach the result he believed to be just. In so doing, Respondent failed to treat the plaintiff and his counsel fairly and impartially and failed to require order and decorum in his courtroom by advocating for the defendant and insulting plaintiff and his counsel.

**Factual Background:**

On May 11, 2017, Respondent signed an order in a divorce case requiring the defendant (wife) to return a vehicle she possessed to the plaintiff (husband). (Joint Stipulation 108 and Joint Exhibit K.) On June 2, 2017, Respondent vacated his prior order and ordered husband to return the first vehicle, as well as a second vehicle, to wife. (Joint Stipulation 110 and Joint Exhibit L.) Five days later, during a proceeding on June 7, 2017, Respondent addressed the possession of the vehicle a third time. Respondent began the proceeding by telling the parties “This mother is going to get a car, and I regret signing that second Order, Mrs. Nash. So, I need to understand the situation.” (Joint Stipulation 113 and Joint Exhibit R.) As the hearing progressed, Respondent insulted husband, calling him a “spiteful former concubine [.]” (Joint Stipulation 117.) When husband’s counsel argued that the vehicles were not marital property, Respondent refused to consider the law stating, “I don’t care about all the legal title and equitable interest and all those moons [.]” (Joint Stipulation 118.) Respondent made no effort to appear fair and impartial, instead openly arguing with

husband's counsel on behalf of wife saying, "I just simply wanted to get the mommy a car" and "[i]f it was up to [husband], she'd either be riding a bike around town or she'd be feeding a horse right now." (Joint Stipulations 118 and 119.) Respondent did not reserve his insults for husband only, telling husband's counsel she was not an effective advocate. (Joint Stipulation 121.)

**Violations of the Code of Judicial Conduct:**

**Canon 2, Rule 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.**

Respondent violated Rule 2.2 of the Code of Judicial Conduct when he refused to apply the law and failed to treat one party fairly and impartially. Respondent's conduct during the June 7, 2017 proceeding established that he was squarely on the side of wife. He began the hearing by stating that he had already determined that he was going to give the wife a car while at the same time admitting that he needed to "understand the situation." He blatantly refused to consider the applicable law and shamelessly admitted that the only reason he was hearing the matter was to "get the mommy a car." If there had been any doubt in the minds of the parties as to who the Respondent favored, the question was answered when Respondent called husband a "spiteful former concubine."

The evidence, in the form of Respondent's own words, established that he refused to hear argument about the law, much less uphold and apply it, in violation of Rule 2.2. Additionally, by stating his decision prior to hearing any testimony or argument, all while admitting that he did not understand the situation, Respondent broadcast his complete lack of impartiality in violation of Rule 2.2 of the Code of Judicial Conduct.

**Canon 2, Rule 2.8(A) Decorum, Demeanor, and Communication with Jurors. A judge shall require order and decorum in proceedings before the court.**

Respondent failed to maintain order and decorum during the June 7, 2017 proceeding, thereby violating Rule 2.8(A) of the Code of Judicial Conduct. One need only read the 20 page transcript of the June 7, 2017 proceeding, to grasp Respondent's complete lack of control over his courtroom. In addition to insulting husband and his counsel as describe above, Respondent allowed the attorneys to argue with one another and interrupt each other. (Joint Exhibit at 17:3-20.) On one occasion, as wife's counsel told husband's counsel that the situation was "ridiculous" and "punitive", Respondent joined the argument sounding very much like co-counsel for wife saying, "Oh, it's worse than that. It's you know, it's spiteful - - it's punitive spiteful." (Id. at 17:17-22.) When husband's counsel, faced with a judge who was about to take all of her client's vehicles away from him, pled with Respondent to allow her client to have one car to get to work, Respondent became openly vindictive saying, "Turnarounds fair play."

The transcript of the June 7, 2017 proceeding provides clear and convincing evidence that Respondent failed to maintain order and decorum thereby violating Rule 2.8(A) of the Code of Judicial Conduct.

**Webster v. Frank Matter**

Desiring to close his courtroom to the public, Respondent did so without understanding, and in violation of, the applicable laws pertaining to the issue.

**Factual Background:**

On October 2, 2018, Respondent was presiding over a Protection from Abuse (PFA) hearing. (Joint Stipulation 124.) The children involved in the matter testified before Respondent in his chambers and were not called to testify in the courtroom.

(Joint Stipulation 127 and Joint Exhibit S.) After hearing the testimony of the children in chambers, the parties and Respondent reconvened in the courtroom at which time Respondent closed his courtroom for the remainder of the proceeding stating, "PFA's aren't [open to the public]." (Joint Stipulation 130 and Joint Exhibit S at 41:2-4.) When the defendant's attorney asked Respondent for the authority under which he had closed the proceeding, Respondent replied, "Well, mine right now. Appeal it, they are private matters given the confidentiality of the filing and we treat them that way, they are civil matters and they are confidential." When the attorney attempted to argue the point, Respondent told him, "You want to be a judge, run for it." (Joint Stipulation 132.) Respondent offered no other explanation regarding his decision to close the hearing. (Joint Exhibit S.)

When asked by the Judicial Conduct Board to provide the authority under which he closed the October 2, 2018 hearing, Respondent appeared to be unaware of the applicable law, asking the Board to "let him know" if closing the hearing was wrong. (Joint Stipulation 136.) Thereafter, he identified two sources to support his decision to close his courtroom: a document produced and distributed by a non-governmental domestic violence organization and the Pennsylvania Unified Judicial System Public Access Policy. (Joint Stipulation 137.)

**Violations of the Code of Judicial Conduct:**

**Canon 2, Rule 2.5(A) Competence, Diligence and Cooperation. A judge shall perform judicial and administrative duties competently and diligently.**

Respondent lacked the competence to analyze and resolve the issue of closing his courtroom to the public in violation of Rule 2.5(A) of the Code of Judicial Conduct. The Constitution of the Commonwealth of Pennsylvania and the common law "support the principle that there is a presumption that all court proceedings are open to the



public.” The presumption applies to criminal and civil proceedings. *Zdrok v. Zdrok*, 829 A.2d 697, 699 (Pa. Super. 2003) (In a divorce proceeding wife’s request to close the trial to the public was denied.) The Pennsylvania Rules of Civil Procedure permit the closure of a proceeding only where doing so is in the interest of “public good, order or morals.” Pa.R.C.P. 223(a)(4). When considering a request to close a court proceeding, the presiding judge may consider the privacy and reputations of innocent parties. However, should the judge decide to close the proceeding he is required to state reasons for the decision to do so. *Katz v. Katz*, 514 A.2d 1374, 1381 (Pa. Super. 1986), Appeal denied, 527 A.2d 542 (Pa. 1987).

Respondent’s reply to the defendant’s attorney regarding the authority under which he was closing the courtroom reflected his lack of competence in the law. Not only did he fail to state any legal reason to close his courtroom, he lashed out at the attorney by telling him to run for election if he wanted to be the judge. Furthermore, prior to this charge being filed in court, Respondent further demonstrated his lack of competence in the law by indicating that he had relied upon two documents in making his decision to close his courtroom. The first, was a document written by a private organization with no authority over the courts of Pennsylvania and the second was a Supreme Court policy on public access to documents, not court proceedings.

The transcript of the *Webster v. Frank* hearing as well as Respondent’s reply to the Judicial Conduct Board’s inquiry into the matter provides this Court with clear and convincing evidence that Respondent violated Rule 2.5(A) of the Code of Judicial Conduct.

### **Modification of Local Court Rules:**

Respondent made no effort understand or to follow proper procedure when he decided to substantially change a local court rule.

### **Factual Background:**

On January 24, 2018, in the matter of *Lewellen v. Lewellen*, a court appointed master appeared before Respondent to request that court funds be dispersed to pay for the services of a stenographer. The master sought the payment of the stenographer pursuant to Greene County Rule 1920.51. (Joint Stipulation 148.) Respondent refused to order the payment telling the master that the court funds were only to be used in cases where the parties were unable to pay the stenographer themselves. (Joint Stipulation 151.) When the master pointed out that Greene County Rule 1920.51 did not distinguish between parties who could pay the stenographer and those who could not, Respondent told the master that he had made the distinction, that he was "the ruler" and that he was interpreting the rule to include the unwritten distinction. (Joint Stipulation 150.)

### **Violations of the Code of Judicial Conduct:**

**Canon 2, Rule 2.5(A) Competence, Diligence and Cooperation. A judge shall perform judicial and administrative duties competently and diligently.**

Respondent failed to follow the correct procedure to modify a court rule, thereby violating Rule 2.5(A) of the Code of Judicial Conduct. By adding an indigency requirement to Greene County Rule 1920.51, Respondent substantially modified the rule. The modification of the rule was such that it entirely changed the rule. Unfortunately, when Respondent decided to change Rule 1920.51, he failed to follow proper procedure. The Pennsylvania Rules of Judicial Administration set forth a

specific, detailed procedure to be used by courts of common pleas when adopting a court rule. In accordance with Pa.R.J.A. 103(d), all proposed local rules are to be submitted to the appropriate Supreme Court Rules Committee prior to enactment. Pa.R.J.A. 103(d)(4). After the Rules Committee has completed its review, the proposed rule is required to be published in the Pennsylvania Bulletin and cannot become effective for at least 30 days following the publication. Pa.R.J.A. 103(d)(5). Respondent made no effort to adhere to the Rules of Judicial Administration when he interpreted Greene County Rule 1920.51 in a manner that substantially changed it.

By failing to adhere to Pa.R.J.A. 103, Respondent exhibited a lack of competence in performing his administrative duties and provided this court with clear and convincing evidence of a violation of Rule 2.5(A) of the Code of Judicial Conduct.

**Derivative Violations:**

**Canon 1, Rule 1.1. Compliance with the Law. A judge shall comply with the law, including the Code of Judicial Conduct.**

**Article V, §17(b), Pa. Const. Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.**

Insofar as Respondent has violated any rule of the Code of Judicial Conduct, he has also violated Rule 1.1 which requires judges to comply with the law, specifically including the Code of Judicial Conduct. Additionally, Respondent's violations of the Code of Judicial Conduct constitute automatic, derivative violations of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania which prohibits judges from violating any canon of judicial ethics prescribed by the Supreme Court. Therefore, Respondent's violations of Rules 1.1, 1.2, 2.2, 2.5, 2.8 and 2.9 of the Code of Judicial Conduct, as discussed herein, constitute automatic derivative

violations of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania and Rule 1.1 of the Code of Judicial Conduct.

## **II. Proposed Conclusions of Law**

1. At Count 1, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Code of Judicial Conduct in his conduct involving Christy McCarty in that he failed to comply with the law when he (a) failed to comply with the law governing civil contempt proceeds, (b) violated McCarty's rights to due process and counsel, (c) violated Rule 1.2 of the Code of Judicial Conduct, (d) violated Rule 2.2 of the Code of Judicial Conduct, (e) violated Rule 2.9(C) of the Code of Judicial Conduct, and (f) violated Rule 2.5(A) of the Code of Judicial Conduct.
2. At Count 2, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Code of Judicial Conduct in his conduct involving Waynette Pelligrini in that he failed to comply with the law when he violated Rules 1.2 and 2.8(B) of the Code of Judicial Conduct.
3. At Count 3, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Code of Judicial Conduct while presiding over the *Kiger v. Depetris* matter in that he failed to comply with the law when he violated Rules 2.2 and 2.8(A) of the Code of Judicial Conduct.
4. At Count 4, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Code of Judicial Conduct while presiding over the *Webster v. Frank* matter in that he failed to comply with the law when he violated Rule 2.5(A) of the Code of Judicial Conduct.

5. At Count 5, the Board has established by clear and convincing evidence that Respondent violated Rule 1.1 of the Code of Judicial Conduct while modifying a local rule of court in that he failed to comply with the law when he violated Rule 2.5(A) of the Code of Judicial Conduct.
6. At Count 6, the Board has established by clear and convincing evidence that Respondent violated Rule 1.2 of the Code of Judicial Conduct in his conduct involving Christy McCarty in that he failed to promote confidence in the judiciary and failed to avoid the appearance of impropriety.
7. At Count 7, the Board has established by clear and convincing evidence that Respondent violated Rule 1.2 of the Code of Judicial Conduct in his conduct involving Waynette Pelligrini in that he failed to promote confidence in the judiciary and failed to avoid the appearance of impropriety.
8. At Count 8, the Board has established by clear and convincing evidence that Respondent violated Rule 2.2 of the Code of Judicial Conduct in his conduct involving Christy McCarty in that he failed uphold and apply the law and to perform all duties of his judicial office fairly and impartially.
9. At Count 9, the Board has established by clear and convincing evidence that Respondent violated Rule 2.2 of the Code of Judicial Conduct while presiding over the *Kiger v. Deptris* matter in that he failed uphold and apply the law and to perform all duties of his judicial office fairly and impartially.
10. At Count 10, the Board has established by clear and convincing evidence that Respondent violated Rule 2.5(A) of the Code of Judicial Conduct while presiding over the *Webster v. Frank* matter in that he failed to perform his judicial duties competently.

11. At Count 11, the Board has established by clear and convincing evidence that Respondent violated Rule 2.5(A) of the Code of Judicial Conduct while modifying a local rule of court in that he failed to perform his administrative duties competently.
12. At Count 12, the Board has established by clear and convincing evidence that Respondent violated Rule 2.8(A) of the Code of Judicial Conduct while presiding of the *Kiger v. Depetris* matter in that he failed to require order and decorum in the proceedings.
13. At Count 13, the Board has established by clear and convincing evidence that Respondent violated Rule 2.8(B) of the Code of Judicial Conduct in his conduct involving Waynette Pelligrini in that he failed to treat her with patience, dignity and courtesy.
14. At Count 14, the Board has established by clear and convincing evidence that Respondent violated Rule 2.8(B) of the Code of Judicial Conduct while presiding over the *Kiger v. Depetris* matter in that he failed to the parties and attorneys with patience, dignity and courtesy.
15. At Count 15, the Board has established by clear and convincing evidence that Respondent violated Rule 2.9(C) of the Code of Judicial Conduct in his conduct involving Christy McCarty in that he investigated facts independently, consider evidence and facts not properly presented.
16. At Count 16, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 1.1,

- 1.2, 2.2, 2.5(A) and 2.9(C) of the Code of Judicial Conduct in his conduct involving Christy McCarty.
17. At Count 17, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 1.1, 1.2, and 2.8(B) of the Code of Judicial Conduct in his conduct involving Waynette Pelligrini.
  18. At Count 18, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 1.1, 2.2, and 2.8(A) of the Code of Judicial Conduct while presiding over the *Kiger v. Depetris* matter.
  19. At Count 19, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 1.1 and 2.5(A) of the Code of Judicial Conduct while presiding over the *Webster v. Frank* matter.
  20. At Count 20, the Board has established by clear and convincing evidence that Respondent violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania as a result of his violations of Rules 1.1 and 2.5(A) of the Code of Judicial Conduct while modifying a local rule of court.
  21. At Count 21, the Board has established by clear and convincing evidence that Respondent violated Article V, § 18(d)(1) of the Constitution of the

Commonwealth of Pennsylvania in that he engaged in misconduct so extreme that brought the judicial office into disrepute.

Respectfully submitted,

RICHARD W. LONG  
Chief Counsel

DATE: May 14, 2021

By:

  
MELISSA L. NORTON  
Deputy Counsel  
Pa. Supreme Court ID No. 46684

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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

President Judge Farley Toothman :  
Court of Common Pleas : 1 JD 2020  
13<sup>th</sup> Judicial District :  
Greene County :

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Judicial Conduct Board of Pennsylvania

Signature:

Name:

  
Melissa L. Norton  
Deputy Counsel

Attorney No.: 46684

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

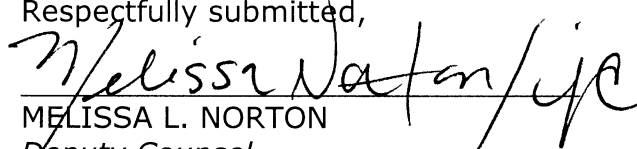
President Judge Farley Toothman :  
Court of Common Pleas : 1 JD 2020  
13<sup>th</sup> Judicial District :  
Greene County :

**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on the date below a copy of the Brief in Support of Proposed Finding of Fact and Conclusions of Law was sent by first class mail to Amy J. Coco, Esquire, and Bethann R. Lloyd, Esquire, counsel for Judge Toothman, at the following address:

Law & Finance Building  
4<sup>th</sup> Ave. Suite 200  
Pittsburgh, PA 15219

DATE: May 14, 2021

Respectfully submitted,  
By:   
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