

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

JUL 19 2021

RECEIVED AND FILED

IN RE: :
: :
President Judge Farley Toothman : :
Court of Common Pleas : No. 1 JD 20
13th Judicial District : :
Greene County :

BEFORE: Honorable Jazelle M. Jones, P.J., Honorable John H. Foradora, J., Honorable James C. Schwartzman, J., Honorable James J. Eisenhower, J., Honorable Ronald S. Marsico, J., Honorable Daniel D. McCaffery, J., Honorable Daniel E. Baranoski, J., Honorable Jill Rangos, J.

OPINION BY JUDGE BARANOSKI

FILED:

OPINION AND ORDER

President Judge Farley Toothman of the Court of Common Pleas of Greene County is before this Court on a Complaint alleging violations of:

- 1) Canon 1, Rule 1.1 - Compliance with the Law;
- 2) Canon 2, Rule 1.2 - Promoting Confidence in the Judiciary;
- 3) Canon 2, Rule 2.2 - Impartiality and Fairness;
- 4) Canon 2, Rule 2.9(c) - Ex Parte Communications;
- 5) Canon 2, Rule 2.5(a) and (c) - Competence, Diligence and Cooperation;
- 6) Canon 2, Rule 2.8 - Decorum;
- 7) Canon 2, Rule 2.9(c) Ex Parte Communications;
- 8) Article II, §17(b) - Judges Not to Violate the Law, and;
- 9) Article V, §18(d)(1) - Bringing the Judiciary Into Disrepute.

The parties have stipulated to the facts in this case as follows:

A. Authority

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.

B. Background and Term as Judicial Officer

2. Retired Judge Toothman (Respondent) is a life-long resident of Greene County.
3. From July 10, 2009, through January 3, 2021, Respondent served as a Judge of the Court of Common Pleas of Greene County.
4. Respondent assumed the duties of a judicial officer, first, by appointment in 2009.
5. At that time, the AOPC "Judge School" was not available to him because he took the bench outside of the election system.
6. Thereafter, Respondent won a general election in November 2011.
7. When he assumed the role as President Judge, Respondent faced many operational and administrative issues.
8. Respondent has not been on the bench since October 2020 due to physical and mental health issues.
9. Effective November 1, 2020, Respondent relinquished his duties as President Judge.
10. Respondent subsequently announced his retirement effective January 3, 2021.

11. As a judicial officer, Respondent was subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania.

Demographics

12. The Greene County courthouse is located in the center of Waynesburg, Pennsylvania, a small rural borough.

13. Between January 2016 and December 2017, Greene County had a vacancy in the office of the Magisterial District Judge for Waynesburg Borough and the western half of the County. This vacancy was not filled until December 21, 2017. During this time, the judicial officers of the Court of Common Pleas of Greene County assumed the additional duties of the Magisterial District Judge.

14. Respondent presided over a vast number of cases in different specialty areas, including criminal proceedings, civil cases and family court, as well as Magisterial District matters for approximately 2 years.

C. Christy McCarty matter

15. At all times relevant to the Board Complaint, Alexandra Chamberlain was employed as Respondent's judicial law clerk.

16. At approximately 4 p.m. on September 6, 2017, Ms. Chamberlain was shopping in a Sunoco station convenience store (store) in Waynesburg, Greene County, located in close proximity to the Greene County Courthouse (courthouse).

17. Moments after Ms. Chamberlain exited the store, another customer from the store, Christy McCarty, age 43, called out to her asking her about her activity in the store.
18. Ms. Chamberlain returned to the store and asked the store clerks about Ms. McCarty's question which she interpreted as an accusation of retail theft.
19. Both store clerks explained that they were not accusing Ms. Chamberlain of stealing anything; however, they were suspicious of her behavior in the store and intended to notify the owner of the store about it so he could check the surveillance footage.
20. Ms. Chamberlain returned to the courthouse and told Respondent about the incident, as she believed she was required to report the incident to her employer.
21. Ms. Chamberlain was not yet a licensed lawyer, but because she was scheduled to sit for the bar examination, she was extremely sensitive to her eligibility and, in particular, the character and fitness requirements and the reporting of any allegation against her.
22. Respondent thought there was potentially a misunderstanding at the Sunoco.
23. Ms. Chamberlain immigrated to the United States from Ukraine when she was a minor.
24. Respondent had known the owner of the Sunoco for many years from activities in the community.
25. Accordingly, Respondent offered to go to the Sunoco and determine if there was an actual complaint, or just a misunderstanding.

26. Ms. Chamberlain did not think it unusual as the county is small and the Respondent often made himself available to community members.
27. Shortly thereafter, Respondent, his son, and Ms. Chamberlain appeared at the store.
28. Respondent's son also knew the owner of the Sunoco and happened to be in Respondent's office talking with his father that afternoon, having recently returned home.
29. The owner of the Sunoco was not present at the store at that time.
30. Respondent was not wearing a judicial robe or other indicia of being a Judge. It was "after courthouse hours."
31. Respondent did not know the Sunoco clerks and had no indication that they knew him.
32. Respondent spoke to the two store clerks, asking them if they believed Ms. Chamberlain had committed retail theft during her earlier visit to the store.
33. The store clerks asked Respondent, his son, and Ms. Chamberlain to leave the store.
34. Respondent, then used his cell phone to call the police, identifying himself as Judge Toothman, and asked the police to immediately respond, investigate and document an alleged accusation of theft.
35. The police responded to the scene and interviewed witnesses.
36. Ms. Chamberlain was never charged with a crime.
37. While on location at the Sunoco on September 6, 2017, the police saw and learned of Ms. McCarty's involvement and provided Respondent with her identity.

38. When deposed by the Board, Respondent recollected that Officer Simms said in reference to Ms. McCarty: "she causes trouble everywhere she goes and she had just left the Sunoco, where there was trouble[.]"
39. When interviewed in 2020, Officer Simms stated that he did not recall Respondent soliciting information about McCarty. Due to the passage of time, Officer Simms did not recall exactly what he said to Respondent relating to McCarty, but did recall McCarty being involved in 3 or 4 other incidents close to the time of the Sunoco incident.
40. At the time, Mr. Simms was full-time First Deputy Sheriff and a part-time Borough Police Officer.
41. Immediately after giving a statement to police, Respondent returned to the courthouse.
42. At approximately 4:30 p.m. that same day, Respondent directed the Assistant Court Administrator, who was responsible for MDJ management, to obtain a copy of all Ms. McCarty's court summaries and files and deliver same to him.
43. Respondent's review of the records included a 10 page Secure Court Summary listing both open and closed cases pertaining to Ms. McCarty.
44. Respondent convened the proceeding described below based on his review of the records and Ms. McCarty's failure, since January 25, 2017, to pay a monthly \$10 fine.
45. At this same time period, the Office of District Court Administration and the Respondent had determined that Greene County had millions of dollars in unpaid fines.

46. At approximately 8:40 a.m. on September 7, 2017, Respondent interrupted a staff meeting in the Greene County Probation Office asking, "Who has Christy McCarty?"
47. An individual from the county probation office responded to inform Respondent that Ms. McCarty was not on probation, but was doing community service in connection with a magisterial district court case.
48. Months prior to this, Respondent had directed that Magisterial District Court Community Service was an administrative responsibility of the Probation Department, for enforcement, and mandated County liability insurance coverage issues.
49. Respondent immediately instructed the probation officer in charge of community service to have Ms. McCarty report to his courtroom that day rather than the site of her community service.
50. At approximately 9:30 a.m. on September 7, 2017, Ms. McCarty reported to Respondent's courtroom as directed.
51. Neither Ms. McCarty nor the Commonwealth were represented by an attorney at the September 7, 2017 proceeding.
52. No petitions, motions or other pleadings were filed relevant to the September 7, 2017 proceeding.
53. Ms. McCarty was given no notice prior to the hearing of the nature of the proceeding.
54. Respondent convened a hearing in the matter of the *Commonwealth v. McCarty* at file 72 of 2010.
55. No witnesses were called and no evidence was entered into the record during the September 7, 2017 proceeding.

56. During the September 7, 2017 proceeding, Respondent recited portions of Ms. McCarty's criminal history.
57. Respondent acknowledges that he should have informed Ms. McCarty of her right to counsel prior to beginning the September 7, 2017 proceeding.
58. During the September 7, 2017 proceeding, while on the record and without apprising her of her Constitutional right against self-incrimination, Respondent asked questions of Ms. McCarty:

Respondent: And in 2010, you were found guilty or pled guilty to theft by unlawful taking of movable property, in violation of Title 18 §3921(a), and you were ordered to do various things.

We've come to understand that you're under supervision in several cases at the magistrate's level, but we also have come to understand that you're in violation of a payment plan that you agreed to make with regard to the costs, fines and fees assessed in this matter, and you made a payment plan, agreed to make \$10 a month payment and you haven't been doing that, and your last payment was last year.

Do you have anything to say?

McCarty: Just, it slipped my mind that I had to pay. It's only \$10 a month, so I didn't really consider it that much, and I was awarded \$30,000 in the Court here, and I got nothing, so – and the guy is dead, now.

59. During the September 7, 2017 proceeding, when Ms. McCarty asked Judge Toothman, "What is the matter I'm here for, the Sunoco incident yesterday?" he told her "No," that she was in court for "violating the order of 72 of 2010" referring to *Commonwealth of Pennsylvania v. Christy L. McCarty*, CP 30-MD-72-2010.

60. *Commonwealth of Pennsylvania v. Christy L. McCarty*, CP 30-MD-72-2010 had been transferred from Fayette County, Pennsylvania, to Greene County on May 24, 2010 for purposes of collection of fines and costs.
61. On August 8, 2016, before the Honorable Louis Dayich, Ms. McCarty agreed to pay \$10 per month toward the balance of her fines and costs in *Commonwealth of Pennsylvania v. Christy L. McCarty*, CP 30-MD-72-2010.
62. Respondent's statement, that Ms. McCarty's last payment in docket number CP 30-MD-72-2010 was "last year" was incorrect in that her last payment as reflected on the docket available to Respondent had been made on January 25, 2017 in the amount of \$10.00.
63. During the September 7, 2017 proceeding, Respondent made no effort to determine if Ms. McCarty had the present ability to meet her obligation under the "order of 72 of 2010."
64. Respondent found Ms. McCarty in "civil contempt" and sentenced her to incarceration in the Greene County Prison until October 2, 2017.
65. Respondent acknowledges that he failed to carefully consider and apply the specific contempt procedures applicable to the September 7, 2017 proceeding.
66. Respondent has further reflected upon the court's contempt powers and believes that indirect criminal contempt was more appropriate for the context.
67. Ms. McCarty was not informed of any rights relevant to an appeal, and did not appeal.
68. Ms. McCarty was given no opportunity to purge herself of Respondent's finding of civil contempt.

69. After sentencing Ms. McCarty to 25 days of incarceration, Respondent placed a telephone call to Frank Pecjak, the owner of the store where the September 6, 2017 incident involving Respondent's law clerk, Ms. Chamberlain, took place.
70. During the telephone call referenced above, Respondent told Mr. Pecjak to come to his chambers at the courthouse, just across the street from Mr. Pecjak's office.
71. When Mr. Pecjak arrived at Respondent's chambers on Friday morning, he found that Respondent's law clerk, Ms. Chamberlain and Respondent's son, were also present.
72. Respondent's son was not employed by Greene County.
73. Respondent asked Mr. Pecjak if he had any objection to the son's presence and he did not.
74. During the meeting with Respondent on September 7, 2017:
 - a. Respondent told Mr. Pecjak that an accusation of theft against Ms. Chamberlain could jeopardize her career.
 - b. Respondent told Mr. Pecjak that he knew Ms. McCarty because she had appeared before him in court.
 - c. Respondent told Mr. Pecjak that Ms. McCarty was "not a stable person."
 - d. Respondent provided Mr. Pecjak with a copy of Ms. McCarty Secure Court Summary although Mr. Pecjak was not a court employee or otherwise authorized to possess a secure court document.
75. At the time of the above events, Respondent was not aware of a difference between a secure court docket summary and a public court docket

summary. He had not specifically requested a secure court summary, but acknowledges, that it is what he received and provided to Mr. Pecjak.

76. Mr. Pecjak subsequently wrote up a disciplinary notice for both store clerks involved in the Sunoco incident for being disrespectful, talking loudly about the incident and for utilizing foul language.
77. Ms. McCarty remained incarcerated until October 2, 2017 on the civil contempt sentence.
78. On October 2, 2017, Ms. McCarty was transported from the Greene County prison to Respondent's courtroom. October 2, 2017 was the standard violations hearing date.
79. Neither Ms. McCarty nor the Commonwealth were represented by an attorney at the October 2, 2017 proceeding.
80. The transcript and audio recording of the October 2, 2017 proceeding reflects that without any preamble such as calling the case or swearing in witnesses, the following occurred:

Respondent:	You've done your time?
Ms. McCarty:	Yes.
Respondent:	You going to be a good girl?
Ms. McCarty:	Yes.
Respondent:	Who is this guy back here?
Ms. McCarty:	My fiancé.
Respondent:	Where do you live?
Ms. McCarty:	At the West Greene Apartments.
Respondent:	You going to comply with all of your court orders because they're stacking up?
Ms. McCarty:	Yes, and I'm in community service and I go to the police station, wash police cars, clean the borough building, work for Chief Toth because he requested me to.
Respondent:	Yeah, well, don't you think I should order you away from the Sunoco?
Ms. McCarty:	For what reason?

Respondent: You don't know?
Ms. McCarty: Oh, well, I'm the one that they said that she looks suspicious. I didn't steal. All I said was are you okay, did you find what you needed? I didn't cause any problems. All I did was ask her a question and she got upset. I didn't do anything to anyone. I understand that she's a clerk in your court, but that wasn't my fault.

Respondent: No, it's not your fault.
Ms. McCarty: The ladies, the clerks, at that gas station said she looks suspicious and she didn't buy anything so I just asked her if she found what she needed, was she okay. That was it. And to me - -

Respondent: And now, this day in the matter of the Commonwealth of Pennsylvania v. Christy L. McCarty, defendant, at file 72 misc. docket of 2010. We find the defendant to be in compliance and we order her immediate release from incarceration.

Ms. McCarty: Thank you.
Respondent: Defendant's remanded to the care of the deputy sheriff for transport and the affect (sic) of this sentence; okay?

81. Immediately after being released from jail on October 2, 2017, Ms. McCarty received jail time credit that released her from the sentencing in more than nine (9) cases, including One thousand five hundred sixty dollars (\$1,560) in accrued fines and Five hundred forty-six (\$546) in lieu of community service.

D. Waynette Pellegrini matter

82. The chambers of a judicial officer have both sensitive and confidential information, both in electronic format and in paper form, including for example, personal information in juvenile, family and criminal cases and personally identifying information in an unredacted format.

83. In the general time frame of 2016 and 2017, the Administrative Office of

the Pennsylvania Courts (AOPC) had been actively studying and circulating new policies governing public access to records and identifying confidential information that was to be shielded from public view. See, e.g., *Explanatory Report: Public Access Policy of the United Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.

84. The janitorial staff serving the courthouse in Greene County was and still is under the supervision of the Board of County Commissioners.
85. In 2017, Waynette Pellegrini became employed by Greene County as a custodian.
86. Ms. Pellegrini's employment position with the County was a union position.
87. In light of the Respondent's general concerns over confidentiality of records, Respondent asked Ms. Pellegrini and other county maintenance employees to sign a confidentiality statement to the Court Administrator in order to gain unsupervised access to judicial chambers.
88. In January 2018, Ms. Pellegrini was refusing to sign the confidentiality statement.
89. Accordingly, Ms. Pellegrini was limited to cleaning public areas, and areas specifically requested by the Office of Court Administration, during business hours.
90. Thereafter, Respondent requested a personal repairman to stop by to make an adjustment to a personal clock in his chambers.
91. On January 24, 2018, Ms. Pellegrini filed a grievance through her labor union alleging that union work was being done in Respondent's chambers by non-union employees in violation of a union contract.
92. On Sunday evening, January 28, 2018, while working on several cases,

Respondent copied Ms. Pelligrini's union grievance onto a piece of bright orange paper and posted it on a public bulletin board just outside the Court Administrator's Office on the second floor of the courthouse. Respondent did not conceal Ms. Pellegrini's name or personal telephone number.

93. On Monday, January 29, 2018, the Greene County Human Resources Director learned that the grievance had been posted as described above and at 8:15 a.m. via email instructed the Court Administrator to remove it as soon as possible.
94. The Court Administrator notified Respondent, via email, of the Human Resources Director's instructions.
95. On Monday, January 29, 2018, Respondent replied to the Court Administrator writing, "Take it down[.]"
96. On Monday, January 29, 2018, prior to the opening of the courthouse to the public, Ms. Pellegrini's grievance was removed from the public bulletin board.
97. Respondent had no direct interactions with Ms. Pellegrini relating to the grievance or the posting.
98. The fact that a grievance had been filed is not confidential and the resulting arbitration decision, and any appeal of that decision, is considered a public record.
99. Subsequent to the posting of Ms. Pellegrini's grievance, a meeting was held with an attorney employed by the Greene County Commissioners, two Greene County Commissioners, the Greene County Human Resources Director and Respondent to discuss his posting of the grievance.
100. At the meeting referenced in the preceding paragraph, Respondent was

told that his act of posting the grievance on a public bulletin board may constitute retaliation for the union grievance filed by Ms. Pellegrini.

101. When told that his act may have constituted retaliation, Respondent exclaimed, "You think I'm going to retaliate? You're damned right I'm going to retaliate!"
102. Respondent's comments arose out of frustration by what he considered to be an entirely frivolous grievance filed in direct response to his month long standing request that Ms. Pellegrini sign a confidentiality statement to protect the operations of the court, and the Commissioners taking no action.
103. By letter dated September 17, 2018, the Pennsylvania State Court Administrator, Tom Darr, notified Ms. Pelligrini that he had determined that, "it was inappropriate for [the] labor grievance to be posted[.]"
104. When deposed by the Board, Responded stated: "[I]t was wrong for me to have put it up."
105. Soon afterwards, Mr. Joseph Mittleman negotiated with the County Solicitor and Union representative, which resulted in all County maintenance employees, including Ms. Pellegrini, signing confidentiality statements.
106. Ms. Pellegrini's grievance was determined to be unfounded.

E. Kiger v. Depetris matter

107. As background, in the matter of *Joseph Kiger v. Amber Depetris*, 18 A.D. of 2017, the parties, plaintiff-Husband and defendant-Wife, both signed a typed "Statement" on March 17, 2017 by which Husband was to continue to make the monthly payments on a vehicle and transfer title to Wife when paid off in exchange for Wife signing over certain property. Husband had

also signed a separate hand-written statement of the same date.

108. At a time when Wife was unrepresented by counsel, Husband, through his counsel, presented a Motion for Special Relief and proposed Order to Respondent to vacate the above agreement in respect to the vehicle. Respondent entered an Order on May 11, 2017 vacating the Statement as having been obtained by coercion and duress and directing Wife to return the vehicle.
109. Wife was aware of the Motion for Special Relief, but later testified that she was at fault for not showing up, stating further that her Husband told her it was not a hearing.
110. By Order dated June 2, 2017, Respondent directed, in response to a Pro Se Motion made by Wife, that Husband return two vehicles, vacating the May 11, 2017 Order.
111. By Order dated June 5, 2017, Judge Dayich *sua sponte* set the matter for a hearing before Respondent on June 7, 2017.
112. By separate Order of June 7, 2017 (the handwritten dates indicates it was signed on June 7th, although the printed date is June 5, 2017), Judge Dayich recognized that Wife became represented and Husband continued to be represented and the Court acknowledged: "there seems to be potentially an agreement about the distribution of motor vehicles" and although the Court had nothing before it, Judge Dayich directed the parties to work to resolve the matter.
113. Also on June 7, 2017, Respondent conducted a hearing at which both parties were represented by counsel. Respondent stated that he regretted signing the second Order and needed to understand the situation.

114. Wife, through her counsel, argued that she had no vehicle and four children, whereas, plaintiff-husband was in possession of two vehicles.
115. Respondent felt plaintiff-Husband had previously taken advantage of an unrepresented defendant-Wife, and the Court, by presenting the prior motion, and handwritten note, and particularly because Wife did not appear.
116. During the hearing, Respondent told the plaintiff-Husband and his attorney, "I'm here about the spitefulness of taking two vehicles in that situation, and I can't believe that you want to argue about it."
117. When plaintiff's counsel stated that her client was not being spiteful, Respondent said, ". . . when I have a mother of four crying in the Courtroom because a spiteful former concubine took off with all the vehicles and his money, I don't get it really."
118. When plaintiff's counsel pointed out that the vehicles were not both marital property, Respondent said, "I don't care about all the legal title and equitable interest and all of those moons, I just simply wanted to get the mommy a car that I thought was parked in a driveway while [the plaintiff] was earning \$120,000 a year."
119. When, later in the proceeding, defendant's counsel addressed plaintiff's counsel stating, "If it was up to your client, she'd either be riding a bike around town or she'd be feeding a horse right now", Respondent concurred with defendant's counsel stating, "I'm afraid that's true, isn't it? What's - - is this what we have resigned to - - "
120. Respondent was attempting to resolve the limited issue of the vehicle, leaving the larger issues of division of marital property for another day.

121. During the June 7, 2017 proceeding, Respondent stated to plaintiff's counsel: "I don't think that's effective advocacy here."
122. When deposed by the Board on January 9, 2020, Respondent explained his conduct during the June 7, 2017 proceeding stating, "I was trying to protect an unrepresented mother of four children."
123. Respondent did not in any way personally benefit from his ruling in favor of the defendant-Wife.

F. Webster v. Frank matter

124. On April 2, 2018, Respondent was presiding over a hearing on a Petition for Protection from Abuse (PFA) in the matter of *Webster v. Frank*, F.A. No. 15 of 2018.
125. Two children, approximately 8 and 11 years old, were the protected parties, and alleged victims, who were in the courthouse and were going to be called to provide testimony of their being abused.
126. One of the two pre-teen girls had emotional and physical manifestations in response to the domestic turmoil in her life that were potentially embarrassing.
127. Respondent met with the girls prior to the hearing.
128. Respondent was concerned that neither wanted to testify in the manner and that they might be intimidated by those watching.
129. Father had filed the Petition and mother and mother's boyfriend were defending.
130. Respondent closed the hearing to everyone but the participants.
131. The defendant's attorney questioned why Respondent was closing the hearing to the public stating, "Courts are open," but he made no objection.

132. When the defendant's attorney asked Respondent for the authority under which he was closing the proceeding, the following exchange took place:

Respondent: 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.

Defendant's Atty: It's not like a CYS case or juvenile case that certain circumstances are closed to the public by statute. I never saw it, but if there is one, I'll look it up.

Respondent: You want to be a judge, run for it, [defendant's attorney]. Continue.

133. Respondent's comment reflected that Defendant's attorney had previously, but unsuccessfully, sought appointment to the bench.

134. Respondent believed temporarily closing the hearing was necessary to protect the privacy rights of two minor children, who were the subject of the protection hearing.

135. Upon closure, no one objected. No one appealed. No press sought access. No member of the public sought access. No participant in the proceeding was excluded. The record was not sealed.

136. When queried during the course of the Board's investigation about closing the PFA hearing, Respondent stated, "If this is wrong, please let me know."

137. By way of further response to the Board's query, Respondent provided the following two sources to support the act of closing the PFA hearing:

1. The Pennsylvania Coalition Against Domestic Violence bench card;
- and
2. The Unified Judicial System Public Access Policy.

138. The Explanatory Report for the AOPC Unified Judicial System Public Access Policy, referenced above, comments (at page 2): "[The courts are

constantly considering issues regarding the need for openness and transparency and the concern for personal privacy and security. With regard to the courts, however, the constitutional and common law presumption of openness has to be carefully weighed against relevant practical, administrative considerations when crafting solutions to avert breaches of privacy and security. Striking the right balance is not an easy task.”

139. Respondent did not in any way personally benefit from closing the hearing.

G. Modification of Local Court Rules, Llewellyn

140. Since 2000, Greene County had a Local Court Rule, Gr.Co.R. 1920.51, which required the payment of an additional \$50 upon the filing of a divorce complaint.

141. Although the parties could not find historical authority stating the specific purpose of the Rule, according to Briefs of both the County of Greene as well as the Greene County Bar Association, the funds were designated to be used for costs of transcribing hearings before a master in a divorce hearing.

142. The Rule provided that the master was “responsible for seeking an Order from the Court for payment to the Court Stenographer.”

143. In 2015, it came to Respondent’s attention through the Prothonotary and District Court Administrator that an audit showed a substantial balance in the Stenographer Fund that was not being actively used, and needed to be transferred out of the Prothonotary’s office immediately.

144. On February 23, 2015, Respondent issued an Administrative Order specifying that funds collected pursuant to the Rule were to be held in a

bank account at PNC Bank, and the County Controller was immediately notified.

145. Respondent and the District Court Administrator desired to keep the funds separate and protected until it could be determined how to appropriately spend the money.

146. After the District Court Administrator recognized that PNC was deducting a fee, on February 10, 2016, Respondent issued an Administrative Order pertaining to Gr.Co.R. 1920.51 that funds collected pursuant to the Rule were then to be held in a bank account at First Federal Savings and Loan, which had given assurances to the District Court Administrator that it would not charge a fee. When PNC was notified it agreed to waive any fees, and the Chief Clerk and County Controller were notified of the two accounts, which remained untouched.

147. Respondent communicated with the Greene County Bar Association to determine the appropriate resolution, but the matter was not resolved as of January 2018.

148. On January 24, 2018, in the matter of *James Lewellen v. Rhonda Lewellen*, No. 711 A.D. 2014, the court appointed master appeared before Respondent seeking a ruling on a previously filed petition for payment to the stenographer pursuant to Gr.Co.R. 1920.51.

149. The master therein was then President of the Bar Association.

150. During the proceeding on January 24, 2018, the following exchange took place between the master and Respondent:

Master:	This is in the matter of Lewellen versus Lewellen. This is a divorce case that I was assigned to be a master on. I had
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submitted a petition for payment of the court reporter fees at the end of November, and Your Honor hasn't made a ruling on that yet.

Respondent: That's because you didn't give me the money. That money is to only be used in situations where there is no money.

Master: No, Your Honor. The rule actually does not distinguish between indigent and - -

Respondent: Well, then I deny it.

Master: Your Honor, there's no - -

Respondent: I want - -

Master: - - no reason to deny this. The rule doesn't make that distinction.

Respondent: I made it. I'm the ruler then. I interpret it that way. It's not going to be opened up to everybody that has money. You haven't shown me whether they have any money or not. You show me they have no money, I'll consider it.

151. At the conclusion of the January 24, 2018 proceeding, Respondent denied the request for payment to the stenographer and ordered that funds collected pursuant to the Rule were only to be used in cases where the master could establish that the parties did not have sufficient means to pay the stenographer out of their own pockets.
152. If called to testify, Respondent would explain that he did not intend to modify the local rule, but interpret it consistent with his understanding of the historical application.
153. Subsequently, Respondent sought the assistance of the AOPC to determine the proper disposition of the funds, which determined that the Local Rule was not authorized, and the two accounts were immediately dissolved and escheated to the County. Respondent thereafter never had a request for any such payments.
154. Thereafter, the Court completed a re-write of all Local Rules, in full

compliance with Pennsylvania Rule of Judicial Administration 103(c)&(d). Respondent entered an Order dated August 12, 2019 rescinding all prior Local Rules (being twenty or thirty years old) and adopting new Local Rules.

155. Respondent did not in any way personally benefit from his interpretation of the Local Rule.

H. Exhibits

156. The parties stipulate to the authenticity and admissibility of all of the following exhibits:

McCARTY

- a. Transcript of the September 7, 2017 hearing in the matter of Commonwealth v. McCarty, CP-30-MD-72-2010.
- b. Audio recording of the September 7, 2017 hearing in the matter of Commonwealth v. McCarty, CP-30-MD-72-2010.
- c. Transcript of the October 2, 2017 hearing in the matter of Commonwealth v. McCarty, CP-30-MD-72-2010.
- d. Audio recording of the October 2, 2017 hearing in the matter of Commonwealth v. McCarty, CP-30-MD-72-2010.
- e. Disciplinary Notices of the Clerks September 10, 2017.
- f. Commonwealth v. McCarty, CP-30-MD-72-2010, docket.
- g. Court Summary of McCarty's Open and Closed Cases

PELLEGRINI

- h. January 24, 2018 union grievance by Ms. Pellegrini.
- i. February 13, 2018 Email Communications between Human Resources Director and Respondent regarding Grievance Response

- j. September 17, 2018 correspondence from Mr. Darr to Ms. Pelligrini.

KIGER v DEPRETIS

- k. Kiger v. Depretris, May 11, 2017 Order.
- l. Kiger v. Depretris, June 2, 2017 Order to vacate May 11, 2017 order.
- m. Kiger v. Depretris, June 2, 2017 Order to vacate June 2, 2017 order.
- n. Kiger v. Depretris, June 5, 2017 Order regarding potential agreement.
- o. Kiger v. Depretris, June 5, 2017 Order scheduling June 7, 2017 hearing.
- p. Kiger v. Depretris, June 7, 2017 Order regarding pickup truck.
- q. Kiger v. Depretris, June 7, 2017 Order regarding sale of marital residence.
- r. Transcript of the June 7, 2017 hearing in the matter of Kiger v. Depretris.

WEBSTER V. FRANK

- s. April 2, 2018 Transcript of hearing in the matter of Webster v. Frank.
- t. August 8, 2018 correspondence from Respondent to Deputy Counsel Norton.
- u. UJC Public Access Policy.

LOCAL RULE:

- v. February 23, 2015 Administrative Order.
- w. February 10, 2016 Order regarding "court reporter account".
- x. January 24, 2018 Transcript of hearing in the matter of Lewellen v. Lewellen.

Discussion

From a review of the Stipulations and the briefs of counsel it is clear that Judge Toothman committed serious misconduct. We note that Judge Toothman has resigned from the bench and will not be seeking judicial office again.

McCarty Incident

Judge Toothman's actions in imprisoning Christy McCarty clearly crossed ethical lines. No judge can act in such an arbitrary manner based on personal whim. Stipulations 17-80 describe the situation in detail. It is obvious Judge Toothman misused his power as a judge to punish Ms. McCarty for offending his law clerk. Imprisoning Ms. McCarty for 25 days for an incident as admitted to in the Stipulated Facts is inexcusable.

Pelligrini Incident

Similarly Judge Toothman's actions in the Waynette Pelligrini matter are a violation of the Canons and the Constitution. The Pelligrini incident is discussed in detail in Stipulations 85-105. In summary, Judge Toothman, in an attempt to intimidate a courthouse employee into signing a confidentiality statement, posted a confidential grievance filed by that employee on a public bulletin board in the courthouse. When told by the Human Resources Director of Greene County that such a public display of the confidential grievance could be viewed as retaliatory Judge Toothman stated "You think I'm going to retaliate? You're damned right I'm going to retaliate." Stipulation 101. Such retaliation violates the Canons and the Constitution.

We find Judge Toothman's misconduct in the McCarty and Pelligrini matters very serious. Intentional and unfair acts such as those committed by

Judge Toothman are so extreme as to violate the Disrepute Clause of the Constitution of Pennsylvania.

The remaining charges involve three proceedings. In one Judge Toothman modified a prior order in a divorce case to rectify what he believed to be an error on his part in granting the former husband the cars while granting no vehicle to the former wife. The new order by Judge Toothman gave the former wife a car.

A second set of charges involved Judge Toothman closing the courtroom to the public during a protection from abuse hearing over the objection of the defendant's attorney.

A third charge involves whether the interpretation of a local rule of court was meant to provide for payment from court funds of a stenographer's bill for services in a master's hearing or whether that source of funding was reserved for indigent parties.

In reviewing these three incidents the Court of Judicial Discipline finds that while there may have been violations of law or procedure, we do not find sufficient evidence to satisfy the clear and convincing standard that an ethical breach was committed.

Accordingly, the Court of Judicial Discipline issues the following 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) Rule 2.5(A) of the Code 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 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.

4. 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 Christy McCarty in that he failed to promote confidence in the judiciary and failed to avoid the appearance of impropriety.

5. 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 to uphold and apply the law and to perform all duties of his judicial office fairly and impartially.

6. 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.

7. 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, and considered evidence and facts not properly presented.

8. 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.

9. 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.

10. 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 in the McCarty and Pelligrini incidents he engaged in misconduct so extreme that brought the judicial office into disrepute.

A Sanction Hearing will be scheduled.