

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

RECEIVED AND FILED

FEB 26 2021

IN RE:

COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA

Judge Farley Toothman :  
Court of Common Pleas :  
13th Judicial District : 1 JD 2020  
Greene County :

**JUDICIAL CONDUCT BOARD PRE-TRIAL MEMORANDUM**

AND NOW, this 22 day of February, 2021, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by and through undersigned counsel, pursuant to this Court's January 13, 2021 Order and files this Pre-trial Memorandum:

A. TRIAL WITNESS LIST

The Board may call some or all of the following witnesses at trial:

1. Aleksandra Chamberlain  
113 Penn Avenue  
Bentleyville, PA 15314

Ms. Chamberlain may testify regarding paragraphs 4 to 39 of the Board Complaint.

2. Shayna Hugo  
156 Wayne Village  
Waynesburg, PA 15370

Ms. Hugo may testify regarding paragraphs 4 to 39 of the Board Complaint.

3. Brianna Evans  
45 West Lincoln Street  
Waynesburg, PA 15370

Ms. Evans may testify regarding paragraphs 4 to 39 of the Board Complaint.

4. Pamela Mason  
10 East High Street  
Waynesburg, PA 15370

Ms. Mason may testify regarding paragraphs 4 to 39 of the Board Complaint.

5. James Moore  
420 Washington Road  
Waynesburg, PA 15370

Mr. Moore may testify regarding paragraphs 4 to 39 of the Board Complaint.

6. Mark Zeiler  
187 Preachers Road  
Waynesburg, PA 15370

Mr. Zeiler may testify regarding paragraphs 4 to 39 of the Board Complaint.

7. Deborah Phillips  
244 Thomas Road  
Carmichaels, PA 15320

Ms. Phillips may testify regarding paragraphs 4 to 39 of the Board Complaint.

8. Marcus Simms  
10 East High Street  
Waynesburg, PA 15370

Mr. Simms may testify regarding paragraphs 4 to 39 of the Board Complaint.

9. Frank Pecjak  
222 Cales Addition  
Carmichaels, PA 15320

Mr. Pecjak may testify regarding paragraphs 4 to 39 of the Board Complaint.

10. Craig Wise  
19 South Washington Street  
Waynesburg, PA 15370

Mr. Wise may testify regarding paragraphs 40 to 50 of the Board Complaint.

11. Sally Cimini, Esquire  
525 William Penn Place  
Pittsburgh, PA 15219

Attorney Cimini may testify regarding paragraphs 40 to 50 of the Board Complaint.

12. Jeff Marshall  
93 High Street  
Waynesburg, PA 15370

Mr. Marshall may testify regarding paragraphs 40 to 50 of the Board Complaint.

13. Waynette Pellegrini  
218 Woodies Road  
Waynesburg, PA 15370

Ms. Pellegrini may testify regarding paragraphs 40 to 50 of the Board Complaint.

14. Rebecca Harris  
93 East High Street  
Waynesburg, PA 15370

Ms. Harris may testify regarding paragraphs 40 to 50 of the Board Complaint.

15. Christine Nash, Esquire  
223 East High Street  
Waynesburg, PA 15370

Attorney Nash may testify regarding paragraphs 51 to 59 and 65 to 73 of the Board Complaint.

16. David Russo, Esquire  
10 East High Street  
Waynesburg, PA 15370

Attorney Russo may testify regarding paragraphs 51 to 59 of the Board Complaint.

17. Adam Belletti, Esquire  
54 South Washington Street  
Waynesburg, PA 15370

Attorney Belletti may testify regarding paragraphs 60 to 64 of the Board Complaint.

18. James Hardisty, Esquire  
223 East High Street  
Waynesburg, PA 15370

Attorney Hardisty may testify regarding paragraphs 60 to 64 of the Board Complaint.

19. Jessica Phillips, Esquire  
223 East High Street  
Waynesburg, PA 15370

Attorney Phillips may testify regarding paragraphs 60 to 64 of the Board Complaint.

B. BOARD EXHIBITS

The Board may introduce some or all of the following exhibits at trial:

1. Transcript of the September 7, 2017 hearing in the matter of *Commonwealth v. McCarty*, CP-30-MD-72-2010.
2. Audio recording of the September 7, 2017 hearing in the matter of *Commonwealth v. McCarty*, CP-30-MD-72-2010.
3. Transcript of the October 2, 2017 hearing in the matter of *Commonwealth v. McCarty*, CP-30-MD-72-2010.
4. Audio recording of the October 2, 2017 hearing in the matter of *Commonwealth v. McCarty*, CP-30-MD-72-2010.
5. Sunoco store video surveillance recordings from September 6, 2017.
6. *Commonwealth v. McCarty*, CP-30-MD-72-2010, docket.

7. January 24, 2018 union grievance by Ms. Pellegrini.
8. *Kiger v. Depetris*, May 11, 2017 Order.
9. *Kiger v. Depetris*, June 2, 2017 Order to vacate May 11, 2017 order.
10. *Kiger v. Depetris*, June 2, 2017 Order to vacate June 2, 2017 order.
11. *Kiger v. Depetris*, June 7, 2017 Order regarding pickup truck.
12. *Kiger v. Depetris*, June 2, 2017 Order regarding sale of marital residence.
13. Transcript of the June 7, 2017 hearing in the matter of *Kiger v. Depetris*.
14. February 23, 2015 Administrative Order.
15. February 10, 2016 Order regarding "court reporter account".
16. Transcript of the January 24, 2018 hearing in the matter of *Lewellen v. Lewellen*.
17. Transcript of the April 2, 2018 hearing in the matter of *Webster v. Frank*.
18. August 8, 2018 correspondence from Respondent to Deputy Counsel Norton.

C. STIPULATIONS

It can reasonably be expected that opposing counsel may agree to the following stipulations:

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.
2. From July 10, 2009, through January 3, 2021, Judge Toothman (Respondent) served as a Judge of the Court of Common Pleas of Greene County.
3. 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.

4. Based on Confidential Requests for Investigation the Board investigated the matters contained in the Board Complaint.
5. As a result of its investigation, and pursuant to Article V, § 18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that there was probable cause to file formal charges against Respondent in this Court.
6. All of the above listed exhibits, which have been provided to Respondent pursuant to C.J.D.R.P. No. 401(D)(1) and (E) are admissible and authentic.

Additionally, based on Respondent's Answer to Complaint filed on September 18, 2020, and information contained in exhibits which have been provided to Respondent pursuant to C.J.D.R.P. No. 401(D)(1) and (E), it can reasonably be expected that Respondent will agree to the following stipulations:

Christy McCarty matter

7. At all times relevant to the Board Complaint, Aleksandra Chamberlain was employed as Respondent's judicial law clerk.
8. At approximately 4 p.m. on September 6, 2017, Ms. Chamberlain was shopping in a Sunoco station convenience store in Waynesburg, Greene County, located in close proximity to the Greene County Courthouse (Courthouse).
9. Moments after Ms. Chamberlain exited the store another customer from the store, Christy McCarty, called out to her asking her about her activity in the store.

10. Ms. Chamberlain returned to the store and asked the store clerks about Ms. McCarty's question which she believed was an accusation of retail theft.
11. Ms. Chamberlain returned to the Courthouse and told Respondent about the incident.
12. Shortly thereafter, Respondent, his son George, and Ms. Chamberlain appeared at the Sunoco convenience store.
13. 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.
14. The store clerks asked Respondent, his son, and Ms. Chamberlain to leave the store because they felt harassed.
15. Respondent, his son, and Ms. Chamberlain left the store, at which time Respondent called the police.
16. The police responded to the scene and investigated the matter.
17. During their investigation on September 6, 2017, the police learned of Ms. McCarty's involvement and provided Respondent with her identity.
18. After speaking with the police, Respondent returned to the courthouse.
19. No charges were filed as a result of the investigation.
20. Immediately after returning to the courthouse, at approximately 4:30 p.m., Respondent directed a court employee to obtain a copy of Ms. McCarty's court summary and all files involving Ms. McCarty.
21. 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?"

22. An individual from the county probation office present in the meeting referenced in the preceding paragraph informed Respondent that Ms. McCarty was not on probation, but was doing community service in connection with a magisterial district court case.
23. 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.
24. At approximately 9:30 a.m. on September 7, 2017, Ms. McCarty reported to Respondent's courtroom as directed.
25. Neither Ms. McCarty nor the Commonwealth were represented by an attorney at the September 7, 2017 proceeding.
26. Respondent should have informed Ms. McCarty of her right to counsel prior to beginning the September 7, 2017 proceeding.
27. 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."
28. At the conclusion of the proceeding, Respondent found Ms. McCarty in civil contempt and sentenced her to incarceration in the Greene County Prison until October 2, 2017.
29. Respondent failed to carefully consider and apply the specific contempt procedures applicable to the September 7, 2017 proceeding.
30. Ms. McCarty remained incarcerated until October 2, 2017 on the civil contempt sentence.



31. On October 2, 2017, Ms. McCarty was transported from the Greene County prison to Respondent's courtroom.
32. Neither Ms. McCarty nor the Commonwealth were represented by an attorney at the October 2, 2017 proceeding.
33. Between September 7, 2017 and October 2, 2017, no payments were made in the matter of *Commonwealth of Pennsylvania v. Christy L. McCarty*, CP 30-MD-72-2010.

Waynette Pellegrini matter

34. At all times relevant to this complaint, Waynette Pellegrini was employed by Greene County as a custodian.
35. Ms. Pellegrini's employment position in Greene County was a unionized position.
36. During 2017, Respondent sought to have Ms. Pellegrini and other county employees sign a confidentiality statement.
37. Ms. Pellegrini refused to sign the confidentiality statement.
38. 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.
39. On January 28, 2018, Respondent posted a bright orange copy of Ms. Pellegrini's grievance on a public bulletin board in the courthouse.
40. Respondent made no effort to redact or conceal Ms. Pellegrini's name or personal telephone number from the copy of the grievance which he posted on a public bulletin board in the courthouse.
41. On January 29, 2018, the bright orange copy of Ms. Pellegrini's grievance was

removed from the public bulletin board.

42. 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.
43. 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.
44. 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!"

Kiger v. Depetris matter

45. On June 7, 2017, Respondent presided over a hearing in the matter of *Joseph Kiger v. Amber Depetris*, 18 A.D. of 2017.
46. Both parties were represented by counsel at the hearing on June 7, 2017.
47. At the time of the hearing, the plaintiff-husband was in possession of two vehicles, while the defendant-wife had no vehicle.
48. During the June 7, 2017 hearing, Respondent told the plaintiff 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."
49. 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."

50. 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."
51. 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 - - "
52. Later in the June 7, 2017 proceeding, Respondent criticized the legal skills of plaintiff's counsel stating, "I don't think that's effective advocacy here."

Webster v. Frank matter

53. On April 2, 2018, while 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, Judge Toothman closed the hearing to everyone but the participants.
54. The defendant's attorney questioned why the Judge was closing the hearing to the public stating, "Courts are open."
55. When the defendant's attorney asked Judge Toothman for the statute under which he was closing the proceeding, the following exchange took place:

Judge: 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.

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

56. When queried during the course of the Board's investigation about closing the PFA hearing, Judge Toothman responded, "If this is wrong, please let me know."

#### Modification of Local Court Rules

57. 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.
58. Pursuant to Gr.Co.R. 1920.51, the additional \$50 (funds) were to be used for the payment of court stenographer fees for hearings before a master.
59. The rule provided that the master was "responsible for seeking an Order from the Court for payment to the Court Stenographer."

#### D. DISCOVERY CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that it has furnished Respondent with the materials required to be exchanged under C.J.D.R.P. No. 401(D)(1).

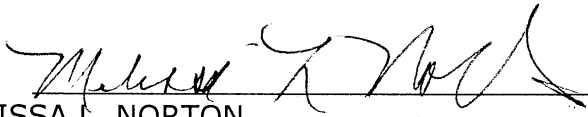
E. EXCULPATORY EVIDENCE CERTIFICATION

The Board, by and through undersigned counsel, hereby certifies that it has provided Respondent with any exculpatory evidence relevant to the charges contained in the Board Complaint in accordance with C.J.D.R.P. No. 401(E).

Respectfully submitted,

RICHARD W. LONG  
Chief Counsel

Date: February 22, 2021

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

Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P.O. Box 62525  
Harrisburg, PA 17106  
(717) 234-7911


**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Judge Farley Toothman	:	
Court of Common Pleas	:	
13 <sup>th</sup> Judicial District	:	1 JD 2020
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 <i>Deputy Counsel</i>
Attorney No.:	46684

**COMMONWEALTH OF PENNSYLVANIA  
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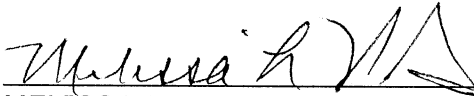
**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, the date below, a copy of the Judicial Conduct Board's Pre-Trial Memorandum was sent by UPS Overnight Mail to Amy J. Coco, Esquire, and Bethann R. Lloyd, Esquire, counsel for Judge Farley Toothman, at the following address:

602 Law and Finance Building  
429 Fourth Avenue  
Pittsburgh, PA 15219-1503

Respectfully submitted,

DATE: February 26, 2021

By:   
MELISSA L. NORTON  
*Deputy Counsel*  
Pa. Supreme Court ID No. 46684  
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Pennsylvania Judicial Center  
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