

COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE

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OF PENNSYLVANIA

JUL 2 2020

RECEIVED AND FILED

IN RE:

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

**JUDICIAL CONDUCT BOARD'S REPLY TO RESPONDENT'S  
OMNIBUS VERIFIED PRETRIAL MOTION AND REQUEST FOR  
ENTRY INTO THE JUDICIAL DIVERSION PROGRAM**

AND NOW, this 2nd day of July, 2020, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (Board) by undersigned counsel and files this Reply to Respondent's Omnibus Motion for Relief.

1. Admitted.
2. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
3. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
4. Admitted. By way of further response, since January 1, 1974, judicial officers have been required to maintain professional competence in the law. Canon 3 (A) (1) of the Code of Judicial Conduct, effective January 1, 1974, rescinded June 30, 2014, required, in relevant part:

(1) Judges should be faithful to the law and maintain professional competence in it.

Thereafter, Canon 2, Rule 2.5 (A) of the Code of Judicial Conduct, effective July 1, 2014, requires:

- (A) A judge shall perform judicial and administrative duties competently and diligently.

Comment (2) to Rule 2.5 states:

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

5. Admitted.
6. Admitted.
7. Denied. Since January 1, 1974, judicial officers have been required to maintain professional competence in the law. See paragraph 4 above.
8. Admitted.
9. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
10. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
11. Admitted in part. To the extent that this paragraph is a summary of the 2018 AOPC complaint and investigation, it is admitted.
12. Denied. Since January 1, 1974, judicial officers have been required to maintain professional competence in the law. See paragraph 4 above.
13. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
14. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
15. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
16. No response is required.

17. Admitted.
18. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

19. Denied. Paragraphs 60 through 64 of the Complaint aver the following:

60. *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.*

61. *The defendant's attorney questioned why the Judge was closing the hearing to the public stating, "Courts are open."*

62. *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.*

63. *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."*

64. *By way of further response to the Board's query, Judge Toothman provided the following two inapplicable, non-statutory sources to support the act of closing the PFA hearing:*

- a. The Pennsylvania Coalition Against Domestic Violence bench card; and*
- b. The Unified Judicial System Public Access Policy.*

20. Admitted.

21. Admitted.

22. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

23. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement. Additionally, this paragraph contains a legal conclusion to which no response is necessary. To

the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

24. Denied. Article I, section 9 of the Constitution of the Commonwealth of Pennsylvania addresses rights of the accused in criminal prosecutions. Article I, section 11 of the Constitution of the Commonwealth of Pennsylvania provides that all courts shall be open. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
25. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
26. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
27. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
28. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed

to set forth factual allegations, they are denied and strict proof thereof is requested.

29. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

30. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

31. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

32. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

33. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

34. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed

to set forth factual allegations, they are denied and strict proof thereof is requested.

35. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

36. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

37. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

38. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

39. No response is required.

40. Admitted.

41. Denied. Paragraphs 65 through 73 of the Complaint aver the following:

*65. 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.*

66. 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.
67. The rule provided that the master was "responsible for seeking an Order from the Court for payment to the Court Stenographer."
68. On February 23, 2015, Judge Toothman issued an Administrative Order modifying Gr.Co.R. 1920.51 by specifying that funds collected pursuant to the Rule were to be held in a bank account at PNC Bank.
69. Judge Toothman did not comply with Rule 103 of the Pennsylvania Rules of Judicial Administration (Pa.R.J.A.) when, on February 23, 2015, he modified Gr.Co.R. 1920.51.
70. On February 10, 2016, Judge Toothman issued an Administrative Order modifying his February 23, 2015 Administrative Order pertaining to Gr.Co.R. 1920.51 by ordering that funds collected pursuant to the Rule were to be held in a bank account at First Federal Savings and Loan.
71. Judge Toothman did not comply with Pa.R.J.A. 103 when, on February 10, 2016, he modified his February 23, 2015 modification to Gr.Co.R. 1920.51.
72. On January 24, 2018, in the matter of James Lewellen v. Rhonda Lewellen, No. 711 A.D. 2014, Judge Toothman orally modified Gr.Co.R. 1920.51 by ordering 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.*

73. *Judge Toothman did not comply with Pa.R.J.A. 103 when, on January 24, 2018, he orally modified Gr.Co.R. 1920.51.*

42. Denied. The Complaint avers the following at paragraph 80:

80. *Judge Toothman failed to comply with the law when he failed to perform his administrative duties competently by modifying a local rule of court multiple times without regarding to the requirements of the Pennsylvania Rules of Judicial Administration. By engaging in the conduct described in paragraphs 65 through 73, Judge Toothman failed to comply with the law within the meaning of Canon 1, Rule 1.1 of the Code of Judicial Conduct.*

43. Denied. The Complaint avers the following at paragraph 92:

92. *Judge Toothman failed to perform his administrative duties competently by modifying a local rule of court multiple times without regard to the requirements of the Pennsylvania Rules of Judicial Administration. By engaging in the conduct described in paragraphs 65 through 73, Judge Toothman failed to perform his judicial duties competently within the meaning of Canon 2, Rule 2.5(A) of the Code of Judicial Conduct.*

44. Denied. See paragraphs 65 through 73 of the Complaint and paragraph 41 above. Additionally, this paragraph contains a legal conclusion to which no

- response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
45. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
46. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
47. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
48. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
49. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
50. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed

to set forth factual allegations, they are denied and strict proof thereof is requested.

51. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.

52. Denied. Section 103 of the Judicial Code provides:

(a) *Necessary powers conferred.—The provisions of this title shall be construed so as to vest in the unified judicial system and in the personnel of the system power to do all things that are reasonably necessary for the proper execution and administration of their functions within the scope of their respective jurisdiction.*

(b) *No inference from express grant of powers.—The inclusion in this title of provisions derived from or based on the text of the Constitution of Pennsylvania and the specification in this title of the powers of the unified judicial system is for the avoidance of potential controversy and the convenient codification of the powers of the system from whatever source derived and shall not be construed as a determination by the General Assembly that any of such powers are or are not inherent in the Supreme Court or the other agencies and units of the system under the Constitution of Pennsylvania or otherwise.*

53. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
54. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
55. No response is required.
56. Admitted.
57. No response is required.
58. Denied. The Complaint avers the following, in relevant part, at paragraph 80:
- 80. Judge Toothman failed to comply with the law when he failed to perform his administrative duties competently by modifying a local rule of court multiple times without regarding to the requirements of the Pennsylvania Rules of Judicial Administration.*
59. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
60. Admitted in part. To the extent that this paragraph is a summary of the allegations referenced, it is admitted.

61. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
62. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
63. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
64. No response is required.
65. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
66. Denied. The Complaint avers the following at paragraph 78:

*78. Judge Toothman failed to comply with the law when he failed to treat both parties fairly and impartially, failed to require order and decorum, and failed to be patient, dignified and courteous to the litigants and their attorneys during the June 7, 2017 proceeding in the matter of Kiger v. Depetris. By engaging in the conduct described in paragraphs 51 through 59, Judge*

*Toothman failed to comply with the law within the meaning of Canon 1, Rule 1.1 of the Code of Judicial Conduct.*

67. No response is required. By way of further response, the Complaint avers a violation of the law, specifically, Canon 2, Rule 2.2 of the Code of Judicial Conduct at paragraphs 85, 86, and 88. The Complaint avers a violation of the law, specifically, Canon 2, Rule 2.8(A) of the Code of Judicial Conduct at paragraphs 93 through 95. The Complaint avers a violation of the law, specifically, Canon 2, Rule 2.8(B) of the Code of Judicial Conduct at paragraphs 96, 97, and 99.
68. No response is required. See paragraph 67 above.
69. No response is required. See paragraph 67 above.
70. Admitted.
71. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
72. Admitted. By way of further response, Article V, Section 18 (a)(8) of the Constitution of the Commonwealth of Pennsylvania provides, in relevant part:
- Complaints filed with the board or initiated by the board shall not be public information. Statements, testimony documents, records or other information or evidence acquired by the board in the conduct of an investigation shall not be public information.*
73. Denied. The Board complied with the confidentiality requirement of the Constitution of the Commonwealth of Pennsylvania. By way of further response, by letter to counsel for the Board dated February 7, 2020, counsel for Judge Toothman, Attorney Amy J. Coco, stated, in relevant part, "there are

docketed references to the Conduct Board Investigation and these references are available to the general public.” The Board did not, nor does it have the power to, make entries into public dockets.

74. Admitted. The Board did not make entries into the public docket, does not have the authority to make entries into the public docket, and does not have the authority to remove or modify entries made in the public docket.

75. Denied. Judge Toothman is not entitled to a remedy for entries made in the public docket over which the Board had no control.

76. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested. By way of further response, laches is an equitable defense. In order for laches apply, a respondent must prove: (1) lack of due diligence by the complaining party; and (2) that respondent was prejudiced by the delay. Examples of prejudice which support a claim of laches include the death of a witness, the unavailability of a witness, the loss or destruction of records and a change in position of the respondent. *In re Lokuta*, 964 A.2d 988, 1130 (Pa.Ct.Jud.Disc. 2008). Furthermore, a respondent who raises a defense of laches against the Commonwealth is required to make a “stronger showing” than when asserting laches against an individual party and courts are generally reluctant to apply the doctrine against the government. *Weinberg v. State Board of Examiners*, 501 A.2d 239, 243 (Pa. 1985).

77. Admitted.

78. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
79. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
80. Denied. The underlying incidents identified in this paragraph are not "dated" having occurred less than three and one-half years prior to the filing of the Complaint.
81. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
82. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
83. Denied. The Complaint sets forth repetitive misconduct.
84. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
85. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
86. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.



87. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
88. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
89. No response is required.
90. No response is required.
91. Admitted.
92. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
93. Neither admitted nor denied. This paragraph contains a legal conclusion to which no response is necessary. To the extent that this paragraph is construed to set forth factual allegations, they are denied and strict proof thereof is requested.
94. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
95. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
96. No response is required.
97. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.

98. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
99. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
100. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.
101. Denied. The Board is without sufficient specific knowledge or information to form a belief as to the truth or accuracy of the statement.


WHEREFORE, the Board, by and through Melissa L. Norton, Deputy Counsel, respectfully requests that this Honorable Court deny Respondent's Omnibus Verified Pretrial Motion and Request For Entry Into The Judicial Diversion Program, or in the alternative, schedule a hearing during which the parties may present evidence and argument in support of their respective positions, and grant such other relief as this Court deems proper.

Respectfully submitted,

RICHARD W. LONG  
Chief Counsel

DATE: July 2, 2020

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 July 2, 2020, a copy of the Board's Reply To Respondent's Omnibus Verified Pretrial Motion and Request for Entry Into the Judicial Diversion Program was sent by first class mail to Amy J. Coco, Esquire, and Bethann R. Lloyd, Esquire, counsel for Judge Toothman, at the following address:

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

Respectfully submitted,

DATE: July 2, 2020

By:



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