

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

**COURT OF JUDICIAL DISCIPLINE  
OF PENNSYLVANIA**

JUN 22 2020

RECEIVED AND FILED

IN RE:

President Judge Farley Toothman	:	
Court of Common Pleas	:	No. 1 JD 2020
13 <sup>th</sup> Judicial District	:	
Greene County	:	

**OMNIBUS VERIFIED PRETRIAL MOTION AND  
REQUEST FOR ENTRY INTO THE JUDICIAL DIVERSION PROGRAM**

President Judge Farley Toothman, by and through his undersigned counsel, respectfully presents this Omnibus Verified Pretrial Motion and Request for Entry into the Judicial Diversion Program in accordance with Rule 411 of the Court of Judicial Discipline Rules of Procedure. In support of his Motion and Request, Judge Toothman states as follows:

**Introduction and Background**

1. In January 2009, Judge Toothman was nominated to fill a vacancy on the Greene County bench.
2. Prior to his nomination, Judge Toothman did not have significant courtroom experience, although he was a hard worker and highly involved in his community and local government, serving as a County Solicitor for seven years and having served on the Board of County Commissioners for two terms.
3. At the time of Judge Toothman's investiture in July 2009, the Administrative Office of Pennsylvania Courts ("AOPC") "Judge School" was not available to him because he took the bench outside of the municipal election cycle.
4. Moreover, in 2009, continuing judicial education was not required.

5. Many years later, the Pennsylvania Supreme Court imposed a program of Continuing Judicial Education (CJE) effective as of January 1, 2017.<sup>1</sup> The stated purpose of CJE was to assure that judges have and maintain the requisite knowledge and skill to fulfill their judicial responsibilities. *See*, CJE Rule 102.

6. Also, in 2016, the Court of Judicial Discipline explored implementation of a permanent Judicial Diversion Program, as originally established by this Court in In re Domitrovich, No. 1 JD 14 (2016). As explained in the Interim Policy Statement: “The purpose of the Program is to improve the quality of the judiciary by providing, mentoring, educational, remedial and rehabilitative programs for judicial officers.” (Interim Policy Stmt., **Exh. A**).

7. From the above, it is clear that around the same time frame as the events complained of in the Complaint, approximately 2015 to early 2018, education and mentorship were just emerging as approved and/or mandated ideas to improve the quality of the judiciary. Prior to that, the judges were on their own.

8. Judge Toothman’s service occurs in a rural county.

9. At the time of Judge Toothman’s appointment and continuing thereafter, the Greene County Court faced multiple operational challenges, such as disharmony between the Commissioners and the Court, a change in the Sheriff with no certified Constables to serve what was a backlog of 4,700 delinquent warrants and other paperwork, lax procedures to protect confidentiality in respect to the work of the Court, and concerns over the accuracy of records management. There were also vacancies in the magisterial bench, impacting the ability to process cases and resulting in the Judge presiding in that role for a period of time.

---

<sup>1</sup>No. 719 Pennsylvania Supreme Court Rules Docket.

10. What is described herein are just some of the operational administrative issues facing Judge Toothman for which he had no training or experience in managing as a President Judge.

11. In 2018, the AOCPC received a complaint regarding Judge Toothman's treatment of staff employed by Greene County, which included allegations that duplicate certain allegations in this matter. Following a thorough investigation by the AOCPC, the investigator stated that it was clear that the Judge believed he "confronted a judicial district in significant need of operational reform[.]" (Letr. 9/17/18, **Exh. B<sup>2</sup>**). However, the Judge's personal management style was deemed counter-productive to achieving the success that the Judge desired. (Id.)

12. As a result of the AOCPC's investigation, and consistent with the Pennsylvania Supreme Court's new focus on mentoring and education, the AOCPC investigator recommended a peer advisor and multiple educational courses for Judge Toothman. (Id.)

13. Judge Toothman welcomed and embraced the AOCPC's recommendations.

14. The Honorable Jolene Grubb Kopriva was appointed to assume the role of a peer advisor. Judge Toothman then worked with his peer advisor and the AOCPC to select courses, as recommended. Judge Toothman completed two recommended courses by mid-November 2018, and reported his progress back to the AOCPC.<sup>3</sup> The Judge is scheduled to attend another class, "Special Consideration for the Rural Court Judge" at an upcoming National Judicial College in September 2020.

15. This background is provided as context for consideration of the relief requested in this Motion, in particular, the Motion for Admission to the Judicial Diversion Program, as an

---

<sup>2</sup> Redacted to preserve confidentiality.

<sup>3</sup> The Judge reported: "... I passed with a score of 97.4%. I learned some good tips and have been putting them to work ... for the better!" (Letr 11/18/18, **Exh. C**).

extension of the education and mentoring that Judge Toothman has already embraced to improve his skills as both a judge and administrator.

16. To avoid redundancy, this Introduction and Background is incorporated into each individual motions below.

**I. MOTION TO DISMISS ALLEGATIONS RELATED TO THE WEBSTER MATTER AS NO VIOLATION OF THE LAW OCCURRED WHEN THE JUDGE CLOSED THE COURTROOM TO THE PUBLIC TO PROTECT TWO CHILDREN.**

17. Rule 411 provides that the Judicial Officer may challenge the validity of the charges on the basis that the facts charged do not constitute misconduct. C.J.D.R.P. 411(D)(1).

18. Judge Toothman's decision-making in connection with the *Webster* Matter does not constitute misconduct.

19. Paragraphs 60 through 64 of the Complaint aver that on April 2, 2018, while Judge Toothman was presiding over a hearing on a Petition for Protection from Abuse (PFA) in the *Webster* Matter, he closed the hearing to everyone but the participants. It is alleged that the defense counsel questioned his legal authority, but no party objected.

20. In connection with the *Webster* Matter, the Board charges that Judge Toothman failed to comply with the law, in violation of Cannon 1, Rule 1.1 of the Code of Judicial Conduct. (Cmplt. ¶79).

21. The Board furthermore charges that Judge Toothman failed to perform his duties competently, in violation of Cannon 2, Rule 2.5(A). (Cmplt. ¶91).

22. The closure of the court was not a violation of any law or duties. None has been cited in the Complaint.

23. Judge Toothman is mindful of the presumption of openness of the Courts arising out of the United States Constitution and Pennsylvania Constitution. However, the constitutional and common law presumption of openness are not absolute and must be carefully weighed against privacy concerns.

24. Article 9 and 11 of the Pennsylvania Constitution specifically address the concept of keeping courts open to the public. Article 9 provides that a criminal defendant has a right to a public trial. Article 11 more generally provides: “All courts shall be open[.]”

25. Article 9 is not applicable to a PFA proceeding, which is not criminal in nature. A PFA proceeding is governed by the Pennsylvania Rules of Civil Procedure. See, Pa.R.C.P. 1901 et seq.

26. Even though Article 9 is inapplicable, its interpretation is nevertheless instructive here, as the Pennsylvania Supreme Court has held: “[T]he right to a public trial is not absolute; rather, it must be considered in relationship to other important interests.” Commonwealth v. Knight, 364 A.2d 902, 906 (1976).

In considering such other interests, a court must assess all of the circumstances to determine if they present a situation in which an exclusion order is necessary. If the court determines a necessity exists, it may then issue an exclusion order; but the exclusion order must be fashioned to effectuate protection of the important interest without unduly infringing upon the accused's right to a public trial either through its scope or duration. Id.

27. The Knight case is particularly instructive, as it involved a minor witness who had suffered and was still suffering emotional trauma. It was apparent to the trial court that the minor was under a great deal of emotional stress. Under such circumstances, the trial court was held not to have abused its discretion in issuing an exclusion order. Id. at 907.

28. Like Knight, in the *Webster* Matter, two children of impressionable age were in the courtroom listening to and potentially providing testimony on the topic of abuse. One pre-teen girl was emotionally traumatized to the point of wetting her bed. These special circumstances warranted an exception to the constitutional requirement of an open court.

29. The “open court” mandate of Article 11 is not absolute. *See, R.W. v. Hampe*, 626 A.2d 1218, 1221 (Pa. Super. 1993)(a party may rebut the presumption of openness, and obtain closure of judicial proceedings and records for “good cause.”).

30. For example, divorce cases present an exception to the general rule of openness, precisely because the issues frequently involve emotional accusations and testimony, which if published, could serve only to embarrass and humiliate the litigants. Katz v. Katz, 514 A.2d 1374, 1379 (1986).

31. For similar reasons, the Juvenile Act provides that “the general public shall be excluded from hearings under this Chapter,” for the salutary reasons of protecting the privacy interests of minors.” 42 Pa.C.S.A. §6336(d).

32. Judge Toothman’s legal references in support of his decision-making, such as the Unified Judicial System Access Policy were not inapplicable, as the Complaint avers (Cmplt. ¶64). To the contrary, the Unified Judicial System Access Policy itself serves to further illustrate that the right to “open courts” is not absolute, but that a balancing of openness and privacy must occur.

33. As yet another example, in the context of a civil trial, a trial judge may regulate or exclude the public or persons in the interest of the “public good, order or morals.” Pa.R.C.P. 223. The Note to Rule 223 provides further: “Trial courts in Pennsylvania customarily exercise discretion as to the exclusion of persons from the courtroom in the interest of good order and morals.”

34. Before subjecting Judge Toothman to potential discipline, the Board must establish that a violation occurred. As a threshold legal issue, the Board must establish that the public has a constitutional right to be present to hear sensitive testimony involving minors and an abusive family relationship, including testimony that a pre-teenage girl wets her bed as an emotional response to the domestic turmoil in her life.

35. Although counsel questioned whether the courtroom could be closed, no one objected.<sup>4</sup> No one appealed. No press sought access. No member of the public sought access or was removed. No participant in the proceeding was excluded. The record was not sealed. Rather, the children were protected—for good cause shown, fully consistent with the Constitutional balancing test established by case law.

36. To the extent that a lawyer or an appellate Judge might disagree with Judge Toothman's decision in balancing the privacy of the children with Constitutional mandates, that is the reason why appeals are taken, such that the parameters of Constitutional law can be reviewed by the appellate courts, set future precedent and guide the entire judiciary.

37. Judge Toothman's decision does not warrant discipline for violation of the law when no such violation has clearly been or can be established.

38. Under the circumstances, it cannot be shown that Judge Toothman violated the Constitution or any other established statutory law or precedential case law.

39. Therefore, Judge Toothman asks that all allegations against him pertaining to the *Webster* Matter be dismissed.

---

<sup>4</sup> When interviewed by the Judicial Conduct Board, Attorney Adam Belletti, one of the attorneys involved in the *Webster* case, was unaware of anything that occurred in the case that would prompt an investigation of the Judge.

**II. MOTION TO DISMISS ALLEGATIONS RELATED TO THE LOCAL RULE MODIFICATION AS THE RULE WAS NOT MODIFIED AND NO VIOLATION OF THE LAW OCCURRED.**

40. Rule 411 provides that the Judicial Officer may challenge the validity of the charges on the basis that the facts charged do not constitute misconduct. C.J.D.R.P. 411(D)(1).

41. The Complaint avers in paragraphs 65 through 73 that Judge Toothman did not comply with Pa.R.J.A 103 when he modified Green County Local Rule 1920.51.

42. The Complaint avers that the modification of a local rule was a violation of law. (Cmplt. ¶80).

43. The Complaint furthermore avers that modification of a local rule constituted a failure to perform his administrative duties competently. (Cmplt. ¶92).

44. The factual premise of these allegations is incorrect. Judicial notice may be taken of the fact that the text of the Local Rule never changed between 2000 (the time of its promulgation) through 2019. When the Local Rule was to be changed in 2020, the proper process was followed.

45. Prior to 2020, Judge Toothman merely interpreted the Local Rule in such a way as to ensure that the purpose of the Local Rule was fulfilled.

46. Specifically, per the Rule, an additional filing fee was collected and intended to be utilized if an impoverished family law litigant could not afford to pay the stenographer. The Rule was rarely invoked, leading to an accumulation of unused funds. The Judge desired to ensure that the funds collected were used properly and also, properly held by a financial institution.

47. Assuming *arguendo* that the Local Rule can be considered to have been modified, no law was violated in doing so.



48. And, assuming *arguendo* that the Local Rule can be considered to have been modified, no incompetency can be shown.

49. A court has broad powers in construing its own rules, which includes the power to suspend a rule when such action is not prejudicial to the other party. Curran v. James Regulator Co., 36 A.2d 187, 188 (1944)(holding that the common pleas court had broad authority to suspend the application of its local rules to open a default judgment).

50. No party was prejudiced by Judge Toothman's actions.

51. Consistent with the guidance of Curran, *supra*, Rule 126 of the Pennsylvania Rules of Civil Procedure teaches: "The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." (italics supplied).

52. Further, the Judicial Code provides: "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." 42 Pa.C.S. § 103.

53. Judge Toothman's actions demonstrated no violation of the law or incompetency. Further, his actions demonstrated that he was performing his administrative functions in interpreting and implementing the Local Rule, protecting litigants and also the fund itself, which was entirely consistent with the intended purpose of the Rule.

54. In sum, Judge Toothman's actions were fully consistent with the concept of judicial administration and did not, in any manner, bring the judiciary into disrepute.

55. Therefore, Judge Toothman asks that all allegations against him pertaining to the alleged Modification of Local Court Rules be dismissed.

### III. MOTION FOR MORE SPECIFICITY AS TO THE ALLEGED VIOLATIONS OF THE LAW

56. Rule 411 provides that the Judicial Officer may challenge the validity of the charges on the basis that the charges do not provide sufficient notice of the allegations to be defended against. C.J.D.R.P. 411(D)(4).

57. Judge Toothman seeks more specificity as to the *Webster* Matter and the *Kiger* Matter as outlined below.

#### A. *Webster Matter*

58. In connection with the *Webster* Matter, Judge Toothman is accused of violating the law by not performing his duties competently. (Cmplt. ¶79). The Complaint does not aver what law was violated or how he was incompetent.

59. For the reasons explained above, Judge Toothman does not believe that his actions violated the U.S. or Pennsylvania Constitution or any other law.

60. The Complaint alleges that the Judge has subsequently provided inapplicable non-statutory sources to support his act of closing the PFA hearing. (Cmplt. ¶64).

61. While the Board finds the Judge's authority inapplicable, the Board's Complaint has not provided any contrary authority, nor revealed the specific statute or case law that he is to have violated. It is not Judge Toothman's burden to prove that no law was violated.

62. Judge Toothman's demeanor is not alleged to be at issue in connection with the *Webster* Matter, only a failure to comply with the law, pled in generic fashion.

63. At the time of his deposition, Judge Toothman raised this same issue: "If this is wrong, please let me know." (Cmplt. 63). He received no response then and no more clarity in the Complaint.

64. Therefore, Judge Toothman asks for more specificity as to what particular law that he is accused to have violated in connection with the *Webster* matter, not only so that he can defend himself in this matter, but to ensure that it does not recur.

**B. *Kiger* Matter**

65. A similar deficiency in the Complaint arises in connection with the allegations in connection with the *Kiger* Matter.

66. The Complaint alleges that 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 . . . .” (Cmplt. ¶78).

67. Judge Toothman cannot be certain from the Complaint whether it is solely his decorum that is at issue, which appears to be the case, or if he has been charged with failure to comply with an actual law.

68. If some actual law has been violated, Judge Toothman wishes to know which one, again, not only so that he can defend himself in this matter, but so that it does not recur.

69. Therefore, Judge Toothman seeks more specificity in respect to whether he is being accused of violating a specific law in relation to the *Kiger* Matter.

**IV. MOTION FOR DISMISSAL FOR VIOLATION OF A  
PROCEDURE REQUIRING CONFIDENTIALITY IN  
RESPECT TO CONDUCT BOARD INVESTIGATIONS**

70. Rule 411 provides that the Judicial Officer may challenge the validity of the charges on the basis of a violation of a Board procedure. C.J.D.R.P. 411(D)(3).

71. Judge Toothman and the undersigned counsel discovered docketed references to the Conduct Board Investigation that were available to the general public.

72. The Conduct Board Investigation is confidential.

73. Judge Toothman has not waived confidentiality. To the contrary, the undersigned counsel brought this breach of confidentiality to the attention of the Board, both verbally and in writing, requesting action to remedy the breach of confidentiality.

74. Upon information and belief, no action has been taken by the Board.

75. Therefore, Judge Toothman seeks dismissal of the Complaint or other appropriate remedy to preserve the confidentiality to which he is entitled during the Conduct Board Investigation.

**V. MOTION TO DISMISS THE COMPLAINT ON THE BASIS OF LACHES.**

76. Rule 411 provides that the Judicial Officer may challenge the validity of the charges on any legal ground. C.J.D.R.P. 411(D). Accordingly, Judge Toothman raises the doctrine of laches and mootness as a bar to the entire Complaint.

77. All of the averments in the Complaint against Judge Toothman pertain to conduct that occurred in the general time frame of between 2015 and early 2018.

78. “Outdated assertions of misconduct are rendered voidable by the doctrine of laches, a defense available in a disciplinary proceeding.” *In re Cicchetti*, 697 A.2d 297, 310 (Pa. Cmwlth. 1997); *In re Lokuta*, 964 A.2d 988 (Pa.Ct. Jud. Disc. 2008).

79. Here, the alleged local rule modification occurred on three separate occasions, in 2015, 2016 and early 2018. To the extent that it is averred that the Judge modified a local rule without compliance with the Pennsylvania Rules of Judicial Administration, the issue could have and should have been first raised immediately in 2015. To the extent there was any improper modification at all, which is denied (and discussed further above), its repetition could have been avoided if brought to the Judge’s attention on a timely basis 5 years ago.

80. The underlying incidents in the remaining Counts of the Complaint are also dated. The *Kiger* Matter occurred in June 2017. The *McCarty* Matter occurred in September 2017. The *Pellegrini* Matter occurred in January 2018. The *Webster* Matter occurred in April 2018.

81. All matters have been under some form of investigation now for approximately 2 years, both before the AOPC as well as the Judicial Conduct Board.

82. The interest of promoting confidence in and the quality of the judiciary are not promoted by proceeding to a hearing based on stale claims that have already been examined and addressed by the AOPC.

83. The matters are unrelated. No pattern or repetitive misconduct is established.

84. Moreover, in respect to what is potentially the most serious charge, the *McCarty* Matter, Judge Toothman's defense is prejudiced by the passage of time.<sup>5</sup>

85. "Laches bars relief when the plaintiff's lack of due diligence in failing to timely institute an action results in prejudice to another." Comm. Ex rel. Pennsylvania Attorney General Corbett v. Griffin, 946 A.2d 668, 676, 677 (Pa. 2008).

86. Furthermore, to the extent there is a concern as to the Judge's management style from approximately 2016 to early 2018, in the past 2 years Judge Toothman has worked cooperatively with his peer advisor and others to address those concerns, rendering further disciplinary action cumulative.

87. In light of the forgoing, the incidents at issue are outdated, stale and moot. Again, the conduct at issue has not been repeated.

88. Judge Toothman did nothing to contribute to any delay in reporting or investigating.

---

<sup>5</sup> For instance, when deposed in January 2020, over 2 1/4 years after the incident, Judge Toothman had difficulty recalling the specifics of his interaction with the store personnel and police, stating several times that he simply could not remember. (J. Toothman Depo. at 101-102, **Exh. D** (Redacted to Preserve Confidentiality)).

89. Therefore, Judge Toothman respectfully requests that the Complaint be dismissed in its entirety on the basis of laches and mootness.

## **VI. MOTION FOR ADMISSION TO JUDICIAL DIVERSION PROGRAM**

90. Finally, to the extent the Complaint is not dismissed, Judge Toothman seeks admission into the Judicial Diversion Program established by this Court in In re Domitrovich, No. 1 JD 14 (2016).

91. Judge Toothman has no prior imposition of discipline.

92. The Complaint does not contain allegations of criminal charges, corruption or other conduct where the presumptive sanction is suspension or removal.

93. The Complaint pertains to incidents involving Judge Toothman's on-bench judicial temperament, his alleged incorrect application of the law, the perception of unfairness to litigants and his administrative decision-making.

94. At all times, Judge Toothman believed that his actions advanced the goals of the court, such as: a) promoting confidentiality given the unsupervised access of janitors to judicial offices and courtrooms; b) addressing the lack of enforcement against a habitual criminal offender; c) protecting vulnerable minor witnesses; d) inquiring about the prior fairness and circumstances by which a represented husband may have taken advantage of an unrepresented wife in presenting an uncontested motion; and e) ensuring that a the local rule was implemented as intended.

95. The Judge reaped no personal benefit from any of the actions at issue in this matter. Nor was that the Judge's desire.

96. In addition to the Introduction and Background Section above, Judge Toothman asks that the following additional information be also considered.

97. Specifically, in terms of Judge Toothman's Administration, he has:

- Implemented "One Court" Pretrial and Enforcement Policies of MDJ & CCP
- Implemented an Institutional Independence Project
- Implemented AOPC Model: Privacy of Offices
- Negotiated Confidentiality Agreements with County union personnel
- Initiated and Implemented Courthouse "At the Door" Access Security
- Implemented "Cellphone Use" Policy
- Implemented Website Administration at DCA Office / Website access to Online "pro se" Documents
- Formalized "Annual Investiture" of Elected Officials
- Formalized "Law Day" w/High School participation
- Created Standard Practice for Constable certification
- Implemented Courthouse Mailing Station to conform with Service Rules
- Implemented "Judicial Library" paper & digital format.
- Reformed personnel documents & hiring practices
- Implemented monitoring of Greene County ACT 13 GasFee – Judicial
- Implemented "Warrant" Issuance, Outstanding Management.
- Implemented & Monitor "Case File Privacy" Policies
- Implemented "online" access to Criminal & (now) Civil Cases & dockets
- Implemented "statistical review" policies.
- Implemented new Notice Requirements for Retirement Board
- Implemented quarterly "Board of Judges" meetings
- Implement quarterly "Safety and Security" meetings
- Rewrote "Local Rules" (last re-write 25 years earlier)
- Initiated "Certified Mediation" option
- Implemented "OneCourt" reform of "Community Service" Program of MDJ & CCP
- Implemented "Centralized Booking Center"
- Implemented a "Specialty Drug Court" and Re-entry Job Training Partnerships
- Implemented 3 Year Oversight Contract between CYS & American Bar Association
- Implemented Update of Continuity of Operations Plan, & lead Covid-19 response
- Implemented reform of Orphans Court docket & reporting.

98. In terms of Judge Toothman's community involvement and outreach, he has been highly involved in supporting numerous events to inform, educate and empower Greene County citizens on issues involving: 1) drug use; 2) the reduction of drug related deaths; 3) employment challenges facing persons with a criminal record; and 4) mental health issues in the community.

99. A more detailed sampling of Judge Toothman's positive contributions to the Court and community is attached as **Exhibit E**.

100. Judge Toothman recognizes that his accomplishments, both within the court system and in the community at large, are in large part attributable to the involvement, support and dedication of many other individuals. This attests to the Judge's ability and strong desire to work with others to accomplish goals that benefit everyone in Greene County.

101. Although Judge Toothman maintains there are defenses as to the violations alleged, he is willing and eager to participate in a Judicial Diversion Program which will allow him to improve further as a judge and administrator and, more generally, a community leader. He has already embraced and implemented the prior recommendations of the AOPC, and will implement and adapt to any additional recommendations if he is afforded the privilege of admission to the Program.

**WHEREFORE**, Judge Toothman respectfully requests that the Court afford him the privilege of admission to the Judicial Diversion Program, to schedule a hearing on such request as may be appropriate, and to defer final disciplinary proceedings until completion of the Program.

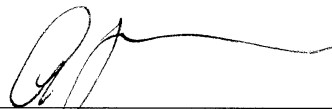
Respectfully,

WEINHEIMER, HABER & COCO, P.C.



---

Bethann R. Lloyd, Esquire  
PA Atty. I.D. 77385  
[brl@whc-pc.com](mailto:brl@whc-pc.com)



---

Amy J. Coco, Esquire  
PA Atty. I.D. 73416  
[ajc@whc-pc.com](mailto:ajc@whc-pc.com)



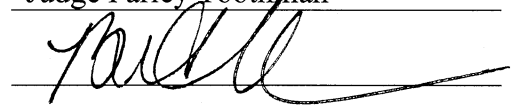
602 Law & Finance Building  
429 Fourth Avenue  
Pittsburgh, PA 15219-1503  
412-765-3399

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that required filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Counsel on behalf of President  
Judge Farley Toothman

Signature:



Name:

Bethann R. Lloyd, Esq.

Attorney ID No. 77385

## **INTERIM POLICY STATEMENT Judicial Diversion Program**

The Court of Judicial Discipline wishes to explore the possibility of implementation of a permanent Judicial Diversion Program as a disposition available to the Court upon the filing of a formal complaint or a petition for relief<sup>1</sup> by the Judicial Conduct Board.

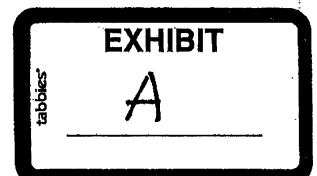
The Court adopts this Interim Policy Statement for guidance and uniform practices pending the decision of the Court to adopt a permanent Judicial Diversion Program.

The Court hopes to develop this Judicial Diversion Program to rehabilitate, and not to punish, therefore the Program, interim and permanent, is for judges who, while charged with ethical violations, typically fall into one of the following categories:

- a. Judicial officers charged with conduct that, if proven, would constitute a violation of the Constitution, the Code of Judicial Conduct, the Rules Governing Standards of Conduct of Magisterial District Judges, or Orders of the Supreme Court of Pennsylvania, but would not likely result in the imposition of serious discipline such as suspension or removal from office following adjudication;
- b. Judicial officers with a mental, physical or emotional disability. In addition to the authority vested in the Court under C.J.D.R.P. No. 601;
- c. Judicial officers with substance abuse issues;

---

<sup>1</sup> Pursuant to C.J.D.R.P. No. 701, the Judicial Conduct Board may file a Petition for Relief rather than file formal charges under Article V, §18(b)(5) of the Pennsylvania Constitution.



d. Judicial officers who have not previously had formal charges filed against them.

This Judicial Diversion Program is not an option in cases involving criminal charges or corruption.

---

1. The Pennsylvania Constitution provides authority to the Court of Judicial Discipline to implement a Judicial Diversion Plan:

Article V, § 18(b)(5)

Upon the filing of formal charges with the court by the board, the court shall promptly schedule a hearing or hearings to determine whether a *sanction* should be imposed against a justice, judge or justice of the peace pursuant to the provisions of this section. The court shall be a court of record, with all the attendant duties and powers appropriate to its function. Formal charges filed with the court shall be a matter of public record. All hearings conducted by the court shall be public proceedings conducted pursuant to the rules adopted by the court and in accordance with the principles of due process and the law of evidence. Parties appearing before the court shall have the right to subpoena witnesses and to compel the production of documents, books, accounts and other records as relevant. The subject of the charges shall be presumed innocent in any proceeding before the court, and the board shall have the burden of proving the charges by clear and convincing evidence. All decisions of the court shall be in writing and shall contain findings of fact and conclusions of law. A decision of the court may order removal from office, suspension, censure or other discipline as authorized by this section and as warranted by the record.

Article V, § 18(d)

A justice, judge or justice of the peace shall be subject to disciplinary action pursuant to this section as follows:

(1) A justice, judge or justice of the peace may be suspended, removed from office *or otherwise disciplined* for conviction of a felony; violation of section 17 of this article; misconduct in office; neglect or failure to perform the duties of office or conduct which prejudices the proper administration of justice or brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity or is prohibited by law; or conduct in violation of a canon or rule prescribed by the Supreme Court. In the case of a mentally or physically disabled justice, judge or justice of the peace, the court may enter an order of removal from office, retirement, suspension *or other limitations on the activities of the justice, judge or justice of the peace as warranted by the record*. Upon a final order of the court for suspension without pay or removal, prior to any appeal, the justice, judge or justice of the peace shall be suspended or removed from office; and the salary of the justice, judge or justice of the peace shall cease from the date of the order.

2. The Judicial Diversion Program is an alternative to formal disciplinary procedures and sanctions, and participation is a matter of privilege, not of right. The purpose of the Program is to improve the quality of the judiciary by providing mentoring, educational, remedial and rehabilitative programs for judicial officers. The Court of Judicial Discipline expressly reserves the right and obligation to ensure that only appropriate judicial officers are invited to participate in the Program and to ensure the compliance of judicial officers with the conditions of the Program.

3. Upon the filing of a formal complaint or petition for relief, but before adjudication, the Court of Judicial Discipline may invite a judicial officer to comply with a Judicial Diversion Program plan, including but not limited to education, counseling, drug and alcohol testing and follow-up treatment, docket management training, monitoring and/or mentoring programs, or other forms of remedial action, including any combination of dispositions that the Court of Judicial Discipline believes will reasonably improve the conduct the judicial officer. Such invitation may be accompanied by the deferral of final disciplinary proceedings.

If a judicial officer refuses to agree to the diversion plan formal proceedings will be followed.

If the counselor, mentor or other professional appointed to supervise the diversion program reports to the Court of Judicial Discipline, or if the Court of Judicial Discipline otherwise determines, that the judicial officer has been noncompliant with the terms, conditions and obligations of diversion formal proceedings will be re-instituted and the judicial officer will be removed from the diversion program.

4. The judicial officer will be required to sign a formal Judicial Diversion Program agreement or contract outlining the terms, conditions and obligations of the diversion plan.

5. Qualified counselors, mentors or other professionals will be appointed by the Court to supervise the Judicial Diversion Program plan, and

will be permitted to submit to the Court of Judicial Discipline reimbursement vouchers for expenses accrued during their service. The Court of Judicial Discipline shall determine what, if any, additional reasonable compensation shall be paid to any counselor, mentor, or other professional appointed by the Court.



Supreme Court of Pennsylvania  
ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS  
Pennsylvania Judicial Center  
Post Office Box 61260  
Harrisburg, PA 17106-1260  
(717) 231-3326

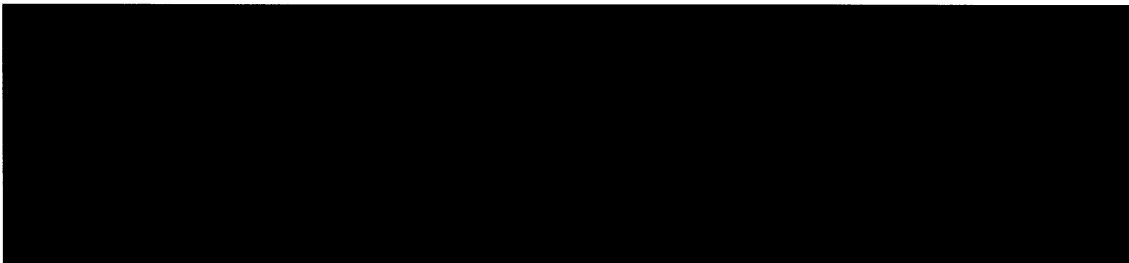
THOMAS B. DARR  
COURT ADMINISTRATOR  
OF PENNSYLVANIA

September 17, 2018

PERSONAL AND CONFIDENTIAL

The Honorable Farley D. Toothman  
President Judge  
Court of Common Pleas of Greene County  
Greene County Courthouse  
10 E. High Street  
Waynesburg, PA 15370

Dear President Judge Toothman:



In accordance with my responsibility under the Policy, I assigned three AOPC staff members to investigate. A thorough investigation as required by our Policy was performed.

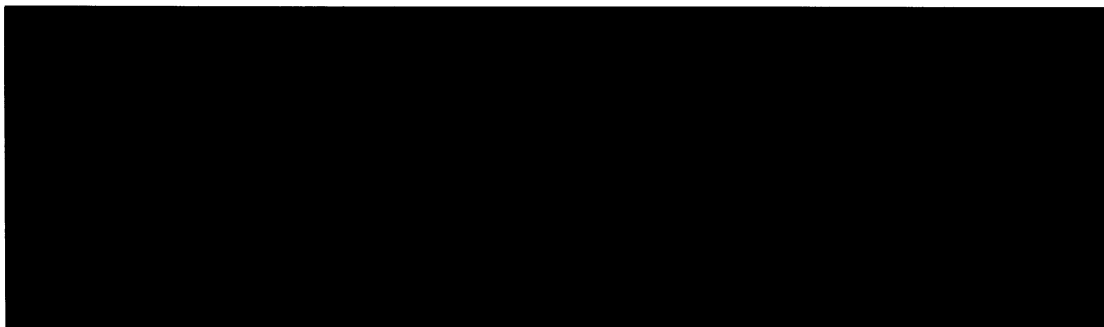
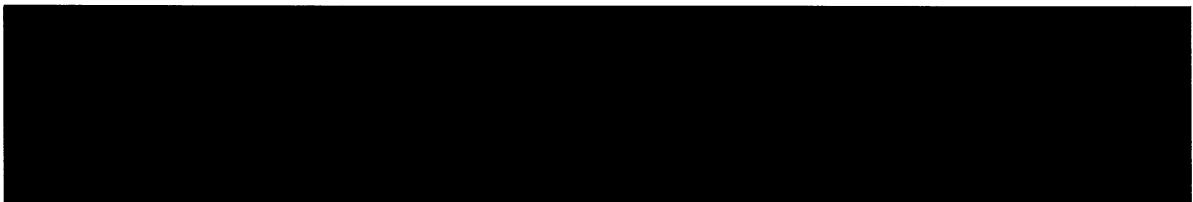
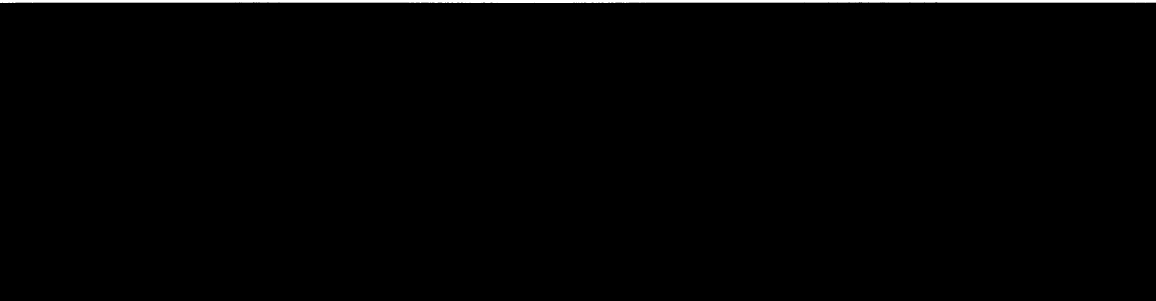
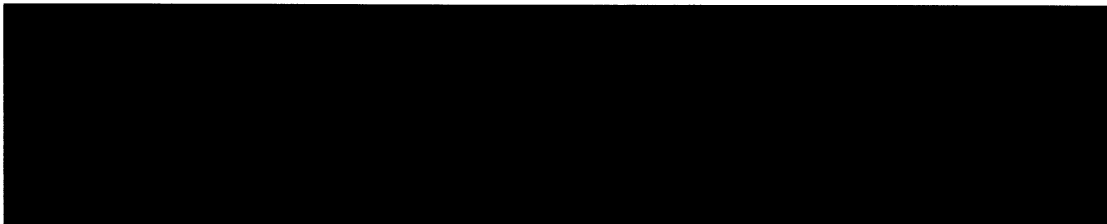


EXHIBIT  
B



In your relatively short tenure as President Judge, it has become clear to me and other AOPC staff that you believe you have confronted a judicial district in significant need of operational reform, especially but not exclusively in the area of family law. Relevant AOPC staff support that assertion. As well, prior to complaints submitted to AOPC, at a Trial Judges' Conference and other meetings, you have publicly expressed your concerns about operational relationships, notably regarding the confidential sanctity of judicial matters, with the county executive function.

These are, in my view, relevant matters in the context of your work and of this review. However, my study of materials generated in the AOPC review indicate that your personal management style and consequent interaction with staff – and possibly members of the bar – creates its own level of dysfunction that is likely counter-productive to achieving the successes you would prefer.



With the foregoing in mind, I encourage you in the strongest of terms to consider your management approach and your personal interaction in strengthening the Thirteenth Judicial District. To that end, a number of remedial options are recommended to work toward long-term success:

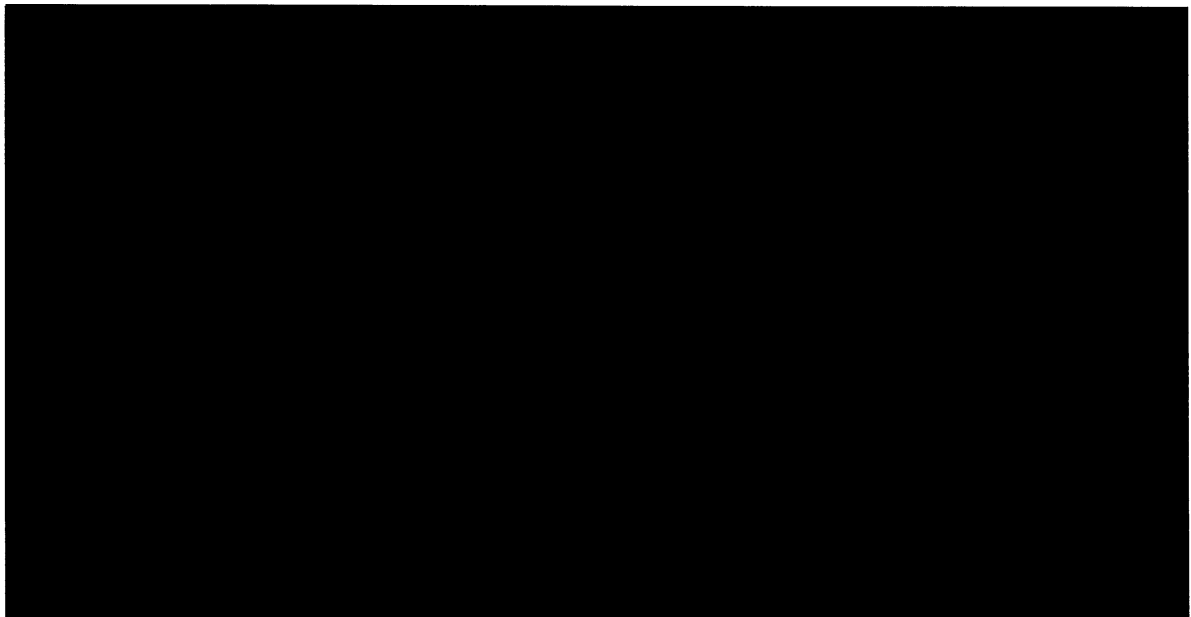
- Appointment by me of a former President Judge from another county to serve as a peer advisor, who may help you evaluate problems you confront and your approach to them. I have a number of judges in mind who might serve this role, but your full cooperation in such an arrangement is critical to any value that may be gained.



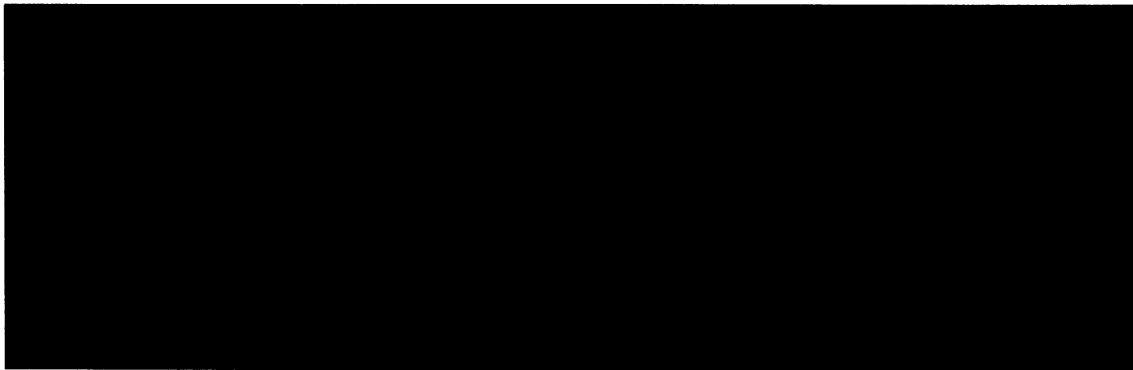
The Honorable Farley D. Toothman  
September 17, 2018  
Page 3

- Identification of National Judicial College courses, typically held in Nevada at the NJC Reno facilities that would broaden your management perspective and provide insights and tools to better manage issues and personalities.
- Participation in a four-week online course from the Wharton School's Executive Education Program, "Leadership in the 21<sup>st</sup> Century, where participants learn how better to engage employees, foster creativity among individuals and teams, lead with purpose, and create a culture that leads to success.
- Identification of a similar tutorial program in which you and District Court Administrator Rode may participate as a management team.
- Completion of an online Harassment Prevention Training (supervisor version) which will assist in increasing awareness and promoting the prevention of any and all forms of harassment.

*Let me know at your convenience when you are available to discuss these recommendations. I emphasize that you should contact the AOPC for assistance and counseling on management and employment matters in the future.*



The Honorable Farley D. Toothman  
September 17, 2018  
Page 4



I urge you to take these recommendations seriously and trust that you are willing to work towards positive outcomes.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Toothman', is written below the word 'Sincerely,'.

cc: Robert A. Graci, Esq.  
Judicial Conduct Board



COURT OF COMMON PLEAS  
GREENE COUNTY  
THIRTEENTH JUDICIAL DISTRICT  
10 EAST HIGH STREET  
WAYNESBURG, PENNSYLVANIA 15370

FARLEY TOOTHMAN  
PRESIDENT JUDGE

(724) 852-5212

November 18, 2018

Mr. Thomas B. Darr, Court Administrator of Pennsylvania  
Administrative Office of Pennsylvania Courts  
Pennsylvania Judicial Center  
PO Box 61260  
Harrisburg PA 17106-1260

RE: Completed Recommended OnLine Management Course  
"Different Work" - National Center for State Courts

Dear Mr. Darr:

As recommended, and on this day, I have successfully completed a second online course, entitled "Different Work - First Course Effective Supervision" sponsored by National Center for State Courts.

It took me a week to get through all 12 Units. Attached is the printed verification that I passed with a score of 97.4%. I learned some good tips and have been putting them to work ... for the better!

Also, I have referred to Judge Kopriva a few matters for her review and recommendation.

VERY TRULY YOURS,

  
FARLEY TOOTHMAN,  
President Judge

Cc: Judge Kopriva, Senior Judge

EXHIBIT

C

tabbies

## Grade Report for Farley Toothman

Course Grade A (97.4%)

### Gradebook Items

▼ Title	Due Date	Grade*	Weight	Comments
▼ Quiz 1		100%	9%	
Lesson Unit 1 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 10		100%	9%	
Lesson Unit 10 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 11		100%	9%	
Lesson Unit 11 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 12		80%	8%	
Lesson Unit 12 Quiz	-	80%		from Tests & Quizzes
▼ Quiz 2		100%	9%	
Lesson Unit 2 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 3		100%	8%	
Lesson Unit 3 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 4		100%	8%	
Lesson Unit 4 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 5		100%	8%	
Lesson Unit 5 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 6		100%	8%	
Lesson Unit 6 Quiz	-	100%		from Tests & Quizzes
▼ Quiz 7		87.5%	8%	

National Center for State Courts | The Longsight Group

(c) sakaiproject.org. All rights reserved. NCSC Elearning - 2.9.1 - Sakai 2.9.1 (Kernel 1.3-SNAPSHOT)- Server nsc06

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMONWEALTH OF PENNSYLVANIA  
JUDICIAL CONDUCT BOARD

-----  
In re: : Nos.: 2017-535; 2017-649;  
: 2018-059; 2018-106; 2018-  
: 151; 2018-202; 2018-239;  
: 2018-242; 2018-243; 2018-  
HON. FARLEY TOOTHMAN : 259; 2018-384; 2018-423;  
-----  
2018-581

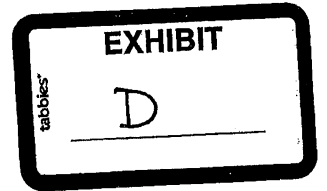
**COPY**

Deposition of: HON. FARLEY TOOTHMAN  
Taken by : Melissa Norton, Esquire  
Before : JOYCE A. WISE, RMR  
Date : January 9, 2020  
Place : Judicial Conduct Board  
601 Commonwealth Avenue  
Suite 3500  
Harrisburg, PA 17106

APPEARANCES:

MELISSA NORTON, ESQUIRE  
Deputy Counsel  
601 Commonwealth Avenue, Ste. 3500  
Harrisburg, PA 17106  
For - Judicial Conduct Board

WEINHEIMER HABER & COCO  
By: Amy Coco, Esquire  
Law & Finance Building  
429 Fourth Avenue, Suite 602  
Pittsburgh, PA 15219  
For - Hon. Farley Toothman



1 BY MS. NORTON:

2

3

4

5

6

7

8

9

10

11

12

13 Q. So you did give your statement to the  
14 police, correct?

15 A. Yes.

16 Q. And did you give it to Officer Simms?

17 A. Yes.

18 Q. Was he the only officer that appeared?

19 A. Appeared, yeah.

20 Q. Thank you.

21 When you gave your statement to Officer  
22 Simms, did you tell him -- I'll wait, I'm sorry.

23 A. That's okay. Go ahead.

24 Q. Did you tell him that the clerks had --  
25 were irrational when you had gone into the store?

1 A. I think so.

2 Q. Did you tell him that they may have been  
3 under the influence, or as you said today, were on  
4 drugs?

5 A. Maybe. I don't recall the specific  
6 words that I used, but I would have portrayed it  
7 just like I have. I walk in there. I said two  
8 things and I'm accused of harassing.

9 Q. Well, if you believe they were on drugs,  
10 that would have been an important thing to tell  
11 them.

12 Q. Can you recall if you told the officer  
13 that?

14 A. No, I can't.

15 Q. Okay.

16 A. I mean, you know, I told you what I  
17 think. It was an irrational approach to the  
18 entire running of the store, let alone just me  
19 coming into it.

20 Q. So it wasn't for me to judge, let's say,  
21 all that or get involved in it. I might have said  
22 that, but I don't remember.

23 Q. So after the police officer took your  
24 statement, what did you do?

25 A. Went back to the courthouse.

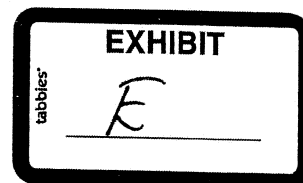
*Summary of positive contributions made to the court and community*

**Farley Toothman, President Judge  
Since becoming PJ in 2015.**

**District Court Administration**

Implemented "One Court" Policies (Complacency to Competency Culture):  
Institutional Independence Project: AOPC Model: Privacy of Offices, eMail, Website, VOIP Phones, Copier Networks, Computers, waste  
OnLine Case & Personnel Calendar Management (35 calendars)  
Negotiated Confidentiality Agreements with County union personnel  
Initiated and Implemented Courthouse "At the Door" Access Security

Implemented "Cellphone Use" Policy  
Implemented Website Administration at DCA Office  
Website access to OnLine "pro se" Documents  
Formalized "Annual Investiture" of Elected Officials  
Formalized "Law Day" w/High School participation  
Created Standard Practice for Constable certification  
Implemented Courthouse Mailing Station to conform with Service Rules  
Implemented "Judicial Library" paper & digital format.  
Personnel: Reformed personnel documents & hiring practices  
Implemented monitoring of Greene County ACT 13 GasFee - Judicial  
Implemented "Warrant" Issuance, Outstanding Management.  
Preservation & enhancement of historic Courthouse building & grounds.  
Implemented & Monitor "Case File Privacy" Policies  
Implemented "online" access to Criminal & (now) Civil Cases & dockets.  
Implemented "statistical review" policies.  
Implemented new Notice Requirements for Retirement Board  
Implemented quarterly "Board of Judges" meetings  
Implement quarterly "Safety and Security" meetings  
Rewrote "Local Rules" (last re-write 25 years earlier)  
Initiated "Certified Mediation" option  
Implemented "OneCourt" reform of "Community Service" Program of MDJ & CCP  
Implemented "Centralized Booking Center"  
Implemented a "Specialty Drug Court" and Re-entry Job Training Partnerships  
Implemented 3 Year Oversight Contract between CYS & American Bar Association  
Implemented Update of Continuity of Operations Plan, & lead Covid-19 response  
Implemented reform of Orphans Court docket & reporting.





#### Magisterial District Court Management

Delegated to Assistant Court Administrator  
Implemented quarterly "Board of Judges" meetings  
Implement quarterly "Safety and Security" meetings  
Installed MDJ Case Management & Reports Software in DCA Office

Courtrooms: All internet & digital technology capable  
Online Calendars available to Public  
Converted Law Library into 3rd Courtroom & Family Conference Rooms

Case Related: File Location Management System  
Transcript Request Reformed  
Case Management Spreadsheets  
Rewrote "Local Rules" (last re-write 25 years earlier)  
Initiated "Certified Mediation" option

#### Education/Outreach:

Routinely attend fairs, festivals & township annual meetings.  
Routinely host college & high school students

#### Sponsored Drug & Alcohol Town Hall Meetings: (October 2015-2017)

- Observer Reporter: Another Town Hall Meeting (10.1.16)
- Awareness rally and prevention efforts on the war against drugs through March for Greene (May 14, 2016)
- Herald Standard: March for Greene (5.6.16)
- Job fair and re-entry conference to include a focus on assisting community residents with criminal records to find employment (June 2016-present)
- Observer Reporter: 2nd Annual Re-Entry Job Fair (3.20.17)
- Coalition for a Brighter Greene formed through Town Hall to inform, educate, and empower Greene County citizens through prevention, accountability, and recovery (July 7, 2016-present)
- Coalition for a Brighter Greene: What we do
- Mental Health Task Force established and executed to apply additional resources to Greene County residents with serious mental health issues seen by the courts (2017-present)
- Greene County's Adult Drug Court was federally funded for implementation to address the growing number of drug related deaths in Greene County (2019-Present)
- Herald Standard: Greene County's First-Ever Drug Court (8.7.19)

County Awarded \$20,000 Grant by AOPC for Treatment Court. (5/22/2020)

## **Magisterial District Courts**

### Service of Process:

Implemented Constable certification and re-certification

Reformed MDJ "Community Service Program" into a single CCP County Probation and Parole education and retraining model. And addressed liability consequences.

Implemented survey of MDJ facilities w/regard to Safety, Security and efficiency.

## **Criminal Court**

### **Administration of Criminal Cases:**

Created "Drug & Alcohol Treatment Court" (presently funded & under certification)  
Implemented Opioid Overdose Task Force

Implemented Standard procedures for Issuance, return & filing of Search Warrants:

### Delinquent Restitution:

Reformed collection of delinquent restitution, costs, fines & fees.  
\$14M delinquent when became PJ. Now \$10M delinquent & cases are current.

Reformed "Community Service Program" into education and retraining focus under supervision of County Probation & Parole Office.

Reformed & Implemented "County Intermediate Punishment" Program w/Criminal Justice Advisory Board. Won challenges on appeal.

Office of Probation & Parole: Moved to remodeled Office Facility

Outfitted officers with personal protection & cell phones

Expanded Pre-Sentence Reports to include MDJ Cases & Mental Health

Integrated services to include pre-trial bail services for MDJ & CCP

Implementation of "Risk Assessments" as a best practice

## **Civil Court**

Reformed collection of delinquent restitution, costs, fines & fees.

\$14M delinquent when became PJ. Now \$10M delinquent & cases are current.

## **Orphans' Court**

Implementation of Guardian Tracking Systems

Cemeteries Identified: for required "Active Cemetery Accounting Reports"

Mental Health: Reformed MH hearing procedures w/Washington Hospital physicians to include extended "Community Treatment Team" options.

Greene County Elderly Abuse Task Force established to address the rising number of reports of elderly abuse, neglect, and financial exploitation (2016-present)

Elder Justice Day coordinated and held in July 2017

- Greene County Messenger: Elder Justice Day (8.5.18)
- Greene County establishes Elderly Guardianship Program to recruit volunteers in coordination with Area Agency on Aging, to assist with making life and medical decisions when they are no longer able to (January 2020-present)

## **Domestic Relations Court: Juvenile/Family/Children & Youth**

Juvenile Delinquency:

Adopted "Peer Court" Process and Procedures with 4 School Districts

Juvenile Dependency:

Children & Youth Procedures

Three Year Partnership Project w/Commissioners & American Bar Association

Adopted "County Truancy Manual" w/MDJ's, CYS & School Districts (456 Cases)

Greene County Messenger: Truancy Mediation Training (8.30.17)


Created Court Appointed Special Advocates (CASA of Greene Inc.) to help abused and neglected children (May 2, 2018-present)

- Greene County Messenger: A Voice for the Children (12.7.18)
- Foster Family Visitations

**VERIFICATION**

I, President Judge Farley Toothman, hereby verify that I have read the **OMNIBUS VERIFIED PRETRIAL MOTION AND REQUEST FOR ENTRY INTO THE JUDICIAL DIVERSION PROGRAM**. The statements of fact contained therein are true and correct to the best of my personal knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

  
\_\_\_\_\_  
President Judge Farley Toothman

DATE: 6-10-20

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within **OMNIBUS VERIFIED PRETRIAL MOTION AND REQUEST FOR ENTRY INTO THE JUDICIAL DIVERSION PROGRAM** has been served on counsel and/or parties of records, by U.S. First Class Mail, postage prepaid, on this 12th day of June, 2020, to the following:

Richard W. Long, Chief Counsel  
Melissa L. Norton, Deputy Counsel  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
Harrisburg, PA 17106

Respectfully submitted,

WEINHEIMER, HABER & COCO, P.C.



---

Bethann R. Lloyd, Esquire  
PA Atty. I.D. 77385  
[brl@whc-pc.com](mailto:brl@whc-pc.com)

Amy J. Coco, Esquire  
PA Atty. I.D. 73416  
[ajc@whc-pc.com](mailto:ajc@whc-pc.com)

602 Law & Finance Building  
429 Fourth Avenue  
Pittsburgh, PA 15219-1503  
412-765-3399