



The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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April 15, 2020

Richard Long, Esquire
Chief Counsel
Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite
Harrisburg, PA 17120

Re: Investigation into Complaint against Allegheny County Court of Common Pleas Judge Mark Tranquilli

Dear Attorney Long,

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness ("Commission"), we wish to submit this letter to the Judicial Conduct Board ("Board") expressing our deep concern with the repeated racist and sexist comments allegedly made by Allegheny County Common Pleas Court Judge Mark Tranquilli in connection with his judicial duties. Based upon our review of court records, the written statements by witnesses and the Code of Judicial Conduct, we believe that there is clear and convincing evidence to support a finding by the Board that Judge Tranquilli violated several sections of the Code in the exercise of his duties as a judicial officer in the Allegheny County Common Pleas Court system. If your investigation confirms the veracity of the allegations, we respectfully recommend that the Board proceed with filing formal charges against Judge Tranquilli with the Court of Judicial Discipline.¹

Mission of Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

By way of background, the Commission was established by the three branches of state government fifteen years ago. The genesis of the Commission was the appointment of a Supreme Court Committee ("Committee") by then-Chief Justice John P. Flaherty in the fall of 1999. The nine Committee members were asked to conduct a study to determine if women and minorities were receiving equal justice in courtrooms around the Commonwealth. After an intensive three-year effort, the Committee presented the Supreme Court with a report of its findings in March of 2003. Entitled the "Final Report on

¹ Note that two members of the Commission are currently serving as members of the judiciary and therefore, abstained from involvement in this matter.

Racial, Ethnic, and Gender Bias in the Justice System" ("Report"), it contained fourteen chapters, each devoted to a specific topic of study, and 173 recommendations designed to address inequities within the system.

Most of the topics of study covered in the Report related to instances of bias in specific types of legal cases and settings. The study also focused, however, on instances and perceptions of racial, ethnic and gender bias, both implicit and explicit, as reported by actual participants in the judicial process — judges, attorneys, litigants, witnesses and court employees throughout Pennsylvania. Female and minority attorneys reported receiving demeaning remarks and disrespectful treatment by judges. Some of these instances included judges confusing African-American attorneys with defendants, and female attorneys with court reporters or the paramour of the defendant; calling these attorneys by their first names or terms of endearment such as “dear” and “hon”; and making sexist or racist jokes in a judge's chambers or in the courtroom at the expense of female attorneys or attorneys of color and their diverse clients. In one particularly egregious example, a white judge from the Philadelphia area admonished an African-American attorney to stop being a "Stepin Fetchit" because he thought the attorney was taking too much time to conduct cross-examination in the case.

Immediately following the establishment of the Commission, then-Chief Justice Ralph J. Cappy and Commission Executive Director Lisette McCormick drafted a Mission Statement, set forth below, to guide the work of the Commission.

The purpose of this Commission is to promote the equal application of the law for all citizens of the Commonwealth of Pennsylvania. Toward that end, the Commission will evaluate and select for implementation recommendations proposed by the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System; raise both public and professional awareness of the impact of race, ethnic origin, gender, sexual orientation or disability on the fair delivery of justice in the Commonwealth of Pennsylvania; suggest ways to reduce or eliminate such bias or invidious discrimination within all branches of government and within the legal profession; and increase public confidence in the fairness of all three branches of government in the Commonwealth of Pennsylvania.

It is our Mission Statement, as well as the information and anecdotal evidence collected by the Supreme Court Committee, that has informed and given rise to our decision to raise our concerns with the Board.

The Repugnant Content of Judge Tranquilli's Comments

The public record is now replete with descriptions of racist and sexist comments made in open court by Judge Tranquilli and allegedly made by him in chambers over the course of his career as a member of the judiciary. In the most recent instance that took place in late January 2020, according to the written statements of both the prosecutor and the defense attorney in the case, Judge Tranquilli called them into his chambers at the

conclusion of a criminal trial in which the defendant was acquitted of drug charges by the jury. The judge was incensed about the verdict and angrily admonished the prosecutor for not striking an African-American woman from the jury during the selection process, stating, "[y]ou weren't out of strikes when you decided to put Aunt Jemima on the jury." The prosecutor wrote that the judge then crossed his arms and scowled, commenting that, "[y]ou know darn well that when she goes home to her baby daddy, he's probably slinging heroin too."

There is little doubt that this incident alone, if true, constitutes a clear violation of Canons 1, 2 and 3 of the Code of Judicial Conduct. But within a few days of the release of the statements by the attorneys in that case, transcripts of court proceedings were obtained that established that Judge Tranquilli had engaged in similar conduct on at least two prior occasions. The difference was that, on these occasions, he made the racist and sexist comments directly to African-American individuals while he presided over their sentencing hearings.

The first case involved the sentencing of an unmarried African-American woman with two children from different fathers. The transcript indicated that Judge Tranquilli asked if the defendant was familiar with the phrase, "if you lay down with dogs, you wake up with fleas?" After the defendant indicated that she was familiar with that phrase, Judge Tranquilli said, "[s]o now you have laid down twice with dogs, but you have woken up with two lovely children, probably two lovely children I'm betting you probably were not planning on. And for the cost of three shiny quarters in any bathroom in any rest stop in Pennsylvania, you probably could have gone in a different direction." The transcript indicated that he went on to state that he had a "notoriously low tolerance for misbehavior", adding that he had been a district attorney for 20 years and for 13 of them, all he did was "dead body cases, dead body, dead body." For the last eight years, he stated that he ran the homicide unit. He said, "[i]f I had a nickel for every picture of a dead person I looked at on my desk while I was eating a turkey sandwich, I could retire right now and be a rich man. As a result of these experiences, there is no milk of human kindness left in these veins."

In another case, involving a young African-American man who was convicted of possession of a stolen gun, the transcript of the hearing indicated that he asked the defendant if he had any children. When the defendant answered that he did not, Judge Tranquilli then stated the following: "Well, you're a young man. I think probably we should keep it that way. I am not saying that because I am not a family man. I have three kids of my own. My parents got married when they were 20 because my mother got in trouble. They got married and it didn't last long. You know, so keep your eye on the ball."

We found it difficult even to reiterate these comments. They are extraordinarily offensive and reflect very poorly not only on Judge Tranquilli, but unfortunately, on the entire judicial system that is entrusted with the responsibility of meting out justice fairly.

Judge Tranquilli's conduct also raises serious questions about the extent to which his apparent bias may have infected his judgment in the cases he prosecuted for the

Allegheny County District Attorney's office for twenty years. For the final eight years in that office, he served as the Chief of the Homicide Unit, where he was responsible for a wide range of critical decisions, such as determining the crime with which to charge the defendant and the degree of severity; to whom a plea bargain should be offered and the terms of it; the evidence to present to the judge and jury during the trial, including which witnesses to call; the length of a defendants' sentence he would recommend to the judge; and most importantly, choosing the cases in which the death penalty should be sought. Many of the individuals who have appeared before him or were prosecuted by him were Latino and African-American men and women, and even juveniles. The ease with which Jude Tranquilli reportedly uttered the above-referenced comments suggests a deeply ingrained prejudice against individuals of color, particularly against women of color.

Applicable Canons of the Code of Judicial Conduct

Based upon the above-detailed recitations of the deeply offensive comments Judge Tranquilli made while he was exercising his judicial duties, we believe that he violated Canons 1 through 3 of the Code of Judicial Conduct., as set forth, in pertinent part, below:

Canon 1. Judges should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. Judges should avoid impropriety and the appearance of impropriety in all their activities.

Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Note: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. Judges must avoid all impropriety and appearance of impropriety. They must expect to be the subject of constant public scrutiny. They must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Canon 3 Judges should perform the duties of their office impartially and diligently.

The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities.

(1) Judges should be faithful to the law and maintain professional competence in it. They should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) Judges should maintain order and decorum in proceedings before them.

(3) Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and should require similar conduct of lawyers, and of their staff, court officials, and others subject to their direction and control.

Note: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

B. Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

(a) they have personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]

Erosion of Public Confidence in the Justice System

Perhaps most importantly, it is beyond question that public confidence in the Pennsylvania justice system has been seriously eroded by the alleged conduct of Judge Tranquilli. National and local newspapers published articles about his conduct on an almost daily basis for at least a month after the information came to light. Articles and letters to the editor continue to appear in local newspapers to this day. Each time a new piece of damaging information is revealed, another group of Pennsylvanians shake their heads in disbelief that our justice system is again mired in controversy, this time regarding the debasement of women and people of color by a judge and former prosecutor. Courts of law cannot operate without the confidence of the public in a civilized society. And members of our judiciary are bound by the Code of Judicial Conduct to act in a way that does not contribute to that erosion.

Conclusion

For more than 15 years, the Commission has worked tirelessly to ensure that all Pennsylvanians, regardless of their race, color, ethnicity, gender or other status, are treated with dignity and respect when they participate in Pennsylvania's justice system. To that end, we stand committed to eliminating implicit and explicit biases that continue to plague this system. The derogatory comments that Judge Mark Tranquilli reportedly made, in open court and in chambers, to and about two female African-American women and an African-American male during the course of his duties demonstrate that our work,

as a Commission, is far from complete. At a minimum, Judge Tranquilli appears to have violated the Equal Protection Clause of the U.S. Constitution and the Pennsylvania Code of Judicial Conduct.

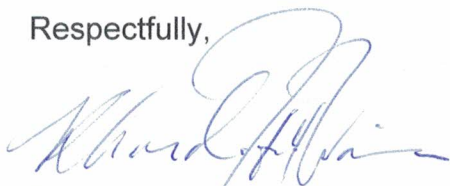
Beyond the violations of the law and the ethics code, however, Judge Tranquill's use of such negative stereotypes is systemically harmful and divisive. When judges, who are entrusted by the public to fairly and impartially administer justice, make blatantly racist and sexist remarks about court participants, public confidence in the judiciary, essential to a civil society, is compromised.

Moreover, at a time when Pennsylvania judicial districts are working to increase the diversity of their juries, Judge Tranquilli's alleged comments may well have the opposite effect, confirming perceptions within communities of color of a system that does not mete out justice fairly. Rather than berating attorneys for following the law, which prohibits discrimination in selecting a jury, Judge Tranquilli should be setting the standard of zero tolerance for discrimination of any kind in our justice system.

In light of the severity of this alleged conduct, the Commission urges the Judicial Conduct Board to conduct its investigation thoroughly, but expeditiously. Every day that this inexcusable incident remains featured prominently in the media, public confidence in our justice system is further eroded.

Thank you for your consideration.

Respectfully,



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Commission Co-Chair



Leonard Rivera, Esq.
Commission Co-Chair



Lisette M. McCormick, Esq.
Executive Director