



## The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

223 Fourth Avenue, Tenth Floor  
Pittsburgh, PA 15222  
412.697.1311  
pa-interbranchcommission.com

September 24, 2020

The Honorable Thomas G. Saylor  
Chief Justice  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, 8th Floor  
Harrisburg, PA 17120

RE: Recent Incidents of Discriminatory Conduct by PA Judges and Other Court Personnel, and the Need for Mandatory Annual Training on Anti-Discrimination and the UJS Policy on Non-Discrimination and Equal Employment Opportunity

Dear Chief Justice Saylor,

As you know, the Commission is dedicated to promoting the equal application of the law for all Pennsylvanians. To that end, we have undertaken numerous initiatives aimed at ensuring that all state court users are treated fairly by state court judges and other court personnel, and are not discriminated against because of their race, ethnic origin, gender, sexual orientation, or disability.

Over the course of the past several months, accounts of Pennsylvania judges, and a UJS non-judicial employee, engaging in discriminatory conduct against court users have surfaced in the media. We are aware that this type of conduct is not reflective of the behavior of most judges and court employees in Pennsylvania. However, due to the extremely offensive and discriminatory nature of these incidents, and their effect on the credibility of the Pennsylvania courts, we are writing now to urge the Court, or its designee, to provide all Pennsylvania judicial officers and UJS-related employees with mandatory annual anti-discrimination training, specifically as it relates to the UJS Policy on Non-Discrimination and Equal Employment Opportunity (UJS Policy), as soon as possible. We feel strongly that this is an urgent matter for the Court to address, especially at this time of unrest in our nation's history.

### **Incidents of Discriminatory Conduct Necessitating Mandatory, Annual Anti-Discrimination Training**

Allegheny County Court of Common Pleas Judge Mark V. Tranquilli

Perhaps the most egregious incidents of a Pennsylvania judge engaging in discriminatory conduct during the course and scope of his/her employment are outlined in the Pennsylvania Judicial

Conduct Board's ("Board") formal charges recently filed against Allegheny County Court of Common Pleas Judge Mark V. Tranquilli.<sup>1</sup> We presume that you are aware of the details of these charges, but feel that they bear repeating as an important justification for our request. According to the allegations contained in the Board's complaint, Judge Tranquilli engaged in discriminatory conduct in at least four different cases over which he presided. In a custody case involving two African-American parents, Judge Tranquilli resorted to using racially-offensive language when he "affected an accent and dialect described as 'Ebonics'" to discuss how he expected the parties to communicate with one another about the subject minor child.<sup>2</sup> In a more recent drug prosecution case, Judge Tranquilli also engaged in racial discrimination when he verbally reprimanded an assistant district attorney for not striking an African-American woman from the jury before trial. During this encounter, Judge Tranquilli referred to the African-American juror by using the racial epithet "Aunt Jemima" and proceeded to apply negative racial stereotypes to her by commenting that, "[you] knew darn well that when she goes home to her baby daddy, he's probably slinging heroin too."<sup>3</sup> Remarkably, the Judge directed these comments to two young members of the bar, who demonstrated extraordinary courage in reporting the Judge's conduct to the Judicial Conduct Board.

In two other criminal proceedings, Judge Tranquilli uttered sexist and homophobic remarks when engaging with criminal defendants during sentencing hearings. In the first instance, sentencing hearing transcripts reveal that Judge Tranquilli inappropriately commented on a female criminal defendant's familial circumstances during her sentencing hearing, comparing the father of her children to a flea-infested dog with whom she had "laid down", and remonstrating her for her failure to use contraception, available "in any bathroom in any rest stop."<sup>4</sup>

In the second instance, when sentencing a male defendant, Judge Tranquilli threatened to "cast [him] down amongst the [S]odomites, all right, in state prison" if he failed to appear for his delayed reporting date.<sup>5</sup> By using the homophobic slur "sodomite" to refer to male inmates, Judge Tranquilli implied that all, or substantially all, of male state correctional institution inmates are homosexual, and that being homosexual is an undesirable and dangerous character flaw.

#### York County Court of Common Pleas Judge Harry N. Ness

In addition to Judge Tranquilli's alleged misconduct, several other Common Pleas judges have also recently been accused of discrimination. In August 2020, multiple media outlets covered a story of a mentally-ill, homeless African-American man suffering from drug addiction, who had a history of retail theft convictions in York County.<sup>6</sup> According to those news reports, as part of the

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<sup>1</sup> See generally Compl., In Re: Judge Mark V. Tranquilli Court of Common Pleas 5<sup>th</sup> Judicial District Allegheny County, 4 JD 2020 (Pa.Ct.Jud.Disc. Aug. 12, 2020).

<sup>2</sup> *Id.* at ¶ 9, 9(a).

<sup>3</sup> *Id.* at ¶¶ 24-26, 29.

<sup>4</sup> *Id.* at ¶¶ 31-32.

<sup>5</sup> *Id.* at ¶ 34.

<sup>6</sup> See e.g., Dylan Segelbaum, *People Stand with Man Holding 'I AM A SERIAL THIEF' Sign in York as Part of Sentence*, YORK DAILY RECORD, Aug. 13, 2020, <https://www.msn.com/en-us/news/crime/people-stand-with-man-holding-i-am->



man's sentence, York County Court of Common Pleas Judge Harry N. Ness required him to stand outside of the York County Judicial Center on Tuesdays and Thursdays for three weeks wearing a sign that said, "I AM A SERIAL RETAIL THIEF. 7 PRIORS!!"<sup>7</sup> Although Judge Ness claimed that this part of the defendant's sentence was designed to change the defendant's behavior, the degrading punishment served no other purpose than to humiliate the defendant and to discriminate against him on the basis of his race and disabilities. The York County NAACP has publicly questioned whether the same sentence would be imposed on a White defendant with a similar prior criminal history<sup>8</sup>.

#### Bucks County Court of Common Pleas Judge Alan M. Rubenstein

Bucks County Court of Common Pleas Judge Alan M. Rubenstein made national news for making sexist remarks about litigants in a protection from abuse ("PFA") proceeding.<sup>9</sup> During the hearing on the PFA petition, Judge Rubenstein referred to the woman seeking a PFA order against her husband as a "little blond honey" who was "too dumb to leave", and that her 401 (k) would be used to pay for her funeral.<sup>10</sup> Judge Rubenstein also insinuated during the same hearing that the defendant had inadequate male anatomy.<sup>11</sup> On appeal, the Pennsylvania Superior Court criticized Judge Rubenstein's remarks, calling them "shocking, sexist, offensive, and egregiously inappropriate."<sup>12</sup> The Superior Court also noted in its opinion that Judge Rubenstein's comments regarding the PFA plaintiff were largely inaccurate as the record established that she has been separated from the defendant since 2017.<sup>13</sup>

#### Greene County Court of Common Pleas Judge Farley Toothman

On May 14, 2020, the Pennsylvania Judicial Conduct Board filed a 21-count complaint against Greene County Common Pleas Court President Judge Farley Toothman with the Court of Judicial Discipline for his conduct in retaliating against a woman for questioning the actions of the judge's law clerk in a local convenience store. The complaint indicated that Judge Toothman ordered his staff to search the woman's court records and ordered an immediate hearing the next day for her, without prior notice, in an unrelated case. At the closed-door hearing, which was held without

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[a-serial-retail-thief-sign-in-york-as-part-of-sentence/ar-BB17PMPp](https://www.yorkdispatch.com/story/news/crime/2020/08/11/judge-da-defendant-weigh-york-man-holding-sign-iding-him-serial-thief/3345576001/); Liz Evans Scolforo, *Judge, DA, Defendant Weigh in on York Man Holding Sign IDing Him as 'Serial' Thief*, YORK DISPATCH, Aug. 11, 2020, <https://www.yorkdispatch.com/story/news/crime/2020/08/11/judge-da-defendant-weigh-york-man-holding-sign-iding-him-serial-thief/3345576001/>; Grace Griffaton, *York County Judge Sentences Man to Hold 'I AM A SERIAL THIEF' Sign*, FOX43, Aug. 11, 2020, <https://www.fox43.com/article/news/local/york-county-judge-sentences-man-to-hold-i-am-a-serial-retail-thief-sign/521-090f1fa3-f003-4997-a224-1548e3752de8>.

<sup>7</sup> Liz Evans Scolforo, *Judge, DA, Defendant Weigh in on York Man Holding Sign IDing Him as 'Serial' Thief*, YORK DISPATCH, Aug. 11, 2020, <https://www.yorkdispatch.com/story/news/crime/2020/08/11/judge-da-defendant-weigh-york-man-holding-sign-iding-him-serial-thief/3345576001/>.

<sup>8</sup> *Supra* note 7.

<sup>9</sup> See Debra Cassens Weiss, *Judge Apologizes for Calling Woman 'Little Blond Honey...Too Dumb to Leave' Her Abuser*, ABA J., Aug. 17, 2020, <https://www.abajournal.com/news/article/judge-apologizes-for-calling-woman-a-little-blond-honey-too-dumb-to-leave-alleged-abuser>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *E.K. v. J.R.A.*, 2020 Pa.Super. 184 (Pa. Super. Ct. 2020).

<sup>13</sup> *Id.* at n.13.



attorneys or prosecutors present, Judge Toothman found McCarty guilty of civil contempt for allegedly violating a payment plan in connection with that case. The woman was held for 25 days at the Greene County Prison. In a subsequent hearing on her release from jail, the Judicial Board complaint stated that the judge asked the woman if she was going to be a "good girl" after her time in jail. She was released that day. The Judicial Board also accused the judge of attempting to cover up his misdeeds by having courthouse staff sign non-disclosure agreements.

Philadelphia County Court of Common Pleas Family Division Supervisor Michael Henkel

In addition to these instances of judicial misconduct, Michael Henkel, a supervisor in the First Judicial District's Family Court, was reported in the media to have torn down signs supportive of the Black Lives Matter movement in a public park and then making a racist comment in a video that went viral.<sup>14</sup> He was fired for violating the UJS Policy and Code of Conduct, but the incident underscores the necessity of anti-discrimination training for court personnel as well as the judiciary.

**First Judicial District Equity Organizational Assessment Report**

In 2019, the Center for Urban and Racial Equity conducted an assessment of the First Judicial District that found numerous complaints of mistreatment and discrimination among its staff and judges. While concluding that overall, the staff and judges felt respected in their workplace, a "culture of nepotism, mistrust and racial tension that is constantly brewing - and occasionally bubbling to the surface"<sup>15</sup> exists in the FJD courts. The assessment found a significant difference in experiences between staff and judges - "staff members had much higher average reports of experiencing discrimination at work relative to judges."<sup>16</sup> Moreover, the assessment uncovered skepticism among both judges and staff that workplace discrimination concerns would be taken seriously. Significantly, staff and judges agreed that there was a need for more efforts that support learning, growth and change at the First Judicial District.<sup>17</sup>

**Recommendations**

The incidents and study conclusions highlighted above demonstrate that at a minimum, some Pennsylvania judges and staff appear to feel free to publicly engage in racist, sexist and homophobic conduct, in derogation of their responsibilities to treat everyone fairly. Especially at this time in our nation's history when racial and ethnic tensions are at historic heights, such conduct occurring within our judiciary and our statewide justice system just adds fuel to the fire.

Consequently, we believe that in addition to discipline for such misconduct, there is an urgent need for the Court to require that all Pennsylvania judicial officers and UJS-related employees receive extensive annual and mandatory anti-discrimination training. At a minimum, this training should include information related to the obligations of judicial officers and other court personnel

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<sup>14</sup> Max Mitchell, *Family Court Fires Employee Caught in Viral Video Making Racist Statement, Tearing Down BLM Signs*, Legal Intelligencer, June 15, 2020, <https://www.law.com/thelegalintelligencer/author/profile/Max-Mitchell/>).

to refrain from discriminating against court users, pursuant to the UJS Policy, Rule 2.3 of the Pennsylvania Code of Judicial Conduct, Rule 2.3 of the Rules Governing Standards of Conduct of Magisterial District Judges, and the Code of Conduct for Court Personnel. Anti-discrimination training that would have the desired effect of curbing and ultimately eliminating bias within the Pennsylvania justice system should also include:

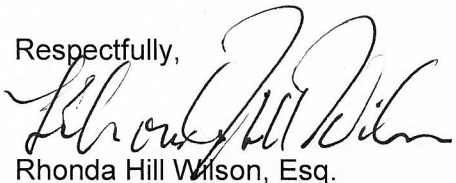
- Requiring all judicial officers and all others serving within the UJS to undergo annual implicit bias training;
- Educating judicial officers and all others serving within the UJS on the history of structural or institutional racism, sexism and homophobia and how these biases continue to negatively impact the administration of justice; and
- Providing judicial officers and all other serving within the UJS with techniques to engage with court users, particularly people of color, ethnic minorities, women, and members of the LGBTQ community, in a culturally competent and non-offensive manner.

In closing, we would like to share with you a relevant and inspiring quote from a recent Resolution passed by the National Conference of Chief Justices and the Conference of State Court Administrators entitled *In Support of Racial Equality and Justice for All*:

“NOW, THEREFORE, BE IT RESOLVED that the members of the Conference of Chief Justices and the Conference of State Court Administrators do hereby agree to continue and to intensify efforts to combat racial prejudice within the justice system, both explicit and implicit, and to recommit to examine what systemic change is needed to make equality under the law an enduring reality for all, so that justice is not only fair to all but also is recognized by all to be fair.”

Thank you for your time and consideration of this important matter. We look forward to hearing your response to our request and we would welcome the opportunity to assist with the provision of the recommended training in any way that would be helpful to the Court.

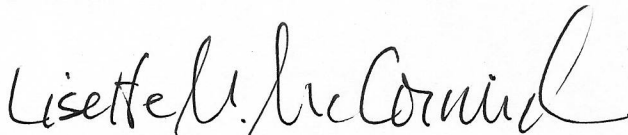
Respectfully,



Rhonda Hill Wilson, Esq.  
Co-Chair



Leonard J. Rivera, Esq.  
Co-Chair



Lisette M. McCormick, Esq.  
Executive Director



cc: Justices of the Supreme Court of Pennsylvania  
Geoff Moulton, Director, Administrative Office of the Pennsylvania Courts  
Members, Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness