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COURT OF JUDICIAL DISCIPLINE
OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

John H. Fishel	:	
Magisterial District Judge	:	No. 3 JD 20
Magisterial District 19-3-01	:	
19 th Judicial District	:	
York County	:	

ORDER

AND NOW, this 24th day of August 2020, it is hereby ORDERED that pursuant to the Interim Policy Statement/Judicial Diversion Program (attached hereto) Magisterial District Judge Elizabeth Beckley (Mentor) is appointed as a counselor and mentor to Judge Fishel to help resolve issues present in this case, specifically:

1. Understanding of, respect for, and compliance with the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity.
2. Ensuring the lawyers, court staff, court officials, and others subject to Respondent's direction and control understand, respect and comply with the Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity.

Statement of Reasons

1. On June 29, 2020, the Judicial Conduct Board filed a Complaint against Magisterial District Judge John H. Fishel, alleging that he engaged in the following conduct:
 - a. Judge Fishel engaged in inappropriate communication and inappropriate physical contact with his court staff.
 - b. Judge Fishel permitted his court staff to participate in inappropriate communication in the court office.

By this Order this matter is being considered for Judicial Diversion. All acts by the Mentor are under the authority of the Court of Judicial Discipline attendant with the immunities thereto.

Method to be Employed

1. To help resolve the issues presented by the Complaint in this case and to educate Judge Fishel, the Mentor will meet at least once a month for the following period: August 20, 2020 through February 20, 2021. The frequency of meeting may be changed if approved by the court.

2. The sessions may be in-person meetings with the judge and/or by electronic or telephonic means.

3. Both the Mentor and Judge Fishel are to work together in a collegial, cooperative, and honest manner, in good faith, and with due regard for the responsibilities and competencies of the other.

4. Mentoring will occur on the subjects set forth above. Judge Fishel is to use his best efforts to attend continuing education programs, read and study written materials, engage in good faith discussion about the issues presented and to resolve those issues with the guidance of the Mentor.

5. The Mentor is to observe Judge Fishel at his District Court as necessary to the accomplishment of the stated goals of this diversion program.

6. **Effect of a substantial failure to comply with the term of the Agreement.** If the Mentor concludes, at any time, that Judge Fishel is not satisfactorily progressing with the terms of this Order, she is to notify the Court of Judicial Discipline of the same, by email and/or in writing. The Mentor is requested to be in contact with counsel to the Court of Judicial Discipline monthly with reports of her sessions with Judge Fishel.

PER CURIAM

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 relief¹ 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;

¹ 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.