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January 14, 2010

Chairman John R. Cellucci and Members
Pennsylvania Judicial Conduct Board
601 Commonwealth Ave, Suite 3500
Harrisburg, PA 17120-0901

Re: Open Letter to the Judicial Conduct Board

Dear Judicial Conduct Board Members:

Pennsylvanians for Modern Courts (PMC) was pleased to see the Judicial Conduct Board's public release of its newly compiled Internal Operating Procedures (IOPs). It is important that these IOPs are in written form and available to the public. PMC believes, however, that further amendments to the Board's procedures are necessary. We specifically request that the Board amend its policy of deferring investigations into judicial misconduct in office because of a pending criminal investigation.

Our concerns about the deferral policy predated the release of the new IOPs. In fact, PMC was prepared to present the Board with a letter about the deferral policy earlier this week, but delayed doing so when we learned that new IOPs would be issued soon. We had hoped the new IOPs would address our concerns about the deferral policy. Unfortunately, we do not believe the deferral procedures outlined in the new IOPs sufficiently serve the Board's duty to protect the public from judges who engage in serious misconduct in office.

The information that has been revealed publicly to date¹ has led Pennsylvanians to conclude that the Board did not act to protect the public from former Luzerne County Judges Conahan and Ciavarella. Instead, there is a growing perception that the Board permitted an external investigation to take priority over its duty to protect the public from judges against whom credible allegations of extreme misconduct and corruption in

¹ Public revelations to date include Judicial Conduct Board filings with the Court of Judicial Discipline ([In re Ann H. Lokuta](#)); Board testimony before the Interbranch Commission on Juvenile Justice; the Board's filings with the Supreme Court to quash subpoenas and requests for testimony from the Interbranch Commission; and stories in the media.

office had been made.

The allegations against the former Luzerne County judges related to the judges' conduct on the bench. The result of the Board's deferring its investigation may very well have been to permit former Judges Conahan and Ciavarella to continue for many more months or even years activities that caused horrendous injury to innocent children.

In some cases, it may be appropriate for the Judicial Conduct Board to defer investigation into certain cases because external criminal investigations are pending. We submit, however, that the Judicial Conduct Board should never defer an investigation into allegations of judicial misconduct in office – that is, allegations related to the judicial role or function itself – to wait for a criminal prosecution. In such cases, when there are allegations relating to subversion of the judicial role, the obligation of the Judicial Conduct Board to protect our system of justice from rogue judges should wait for no other process.

New IOP 4.07 provides that the Board may in some cases pursue an investigation into judicial misconduct even while a criminal investigation is ongoing. But the Board is not required to do so. Discretion should be maintained by the Board in deciding whether or not to *refer* matters to law enforcement agencies, but the Board should never *defer* investigations into allegations of judicial misconduct in office simply because of a concurrent criminal investigation.

Further, IOP 4.07 permits the Board to investigate allegations in a complaint that are severable from alleged criminal conduct. However, IOP 4.07 does not identify what considerations would guide the Board's decision about whether to sever and how it should proceed if it decides to sever – and pursue investigations into some -- allegations in a complaint. Moreover, PMC submits that severance is not the answer to the problem: if the alleged criminal conduct is related to the judicial function, it should be concurrently investigated by the Board. Simply put, if another case were to arise alleging serious misconduct on the bench or in the courtroom – including corruption, case fixing or some other subversion of the judicial function – it is uncertain how IOP 4.07 would be applied.

The people of Pennsylvania need and deserve certainty – certainty that the Board will investigate judicial misconduct in office, regardless of pending criminal investigations. New IOP 4.07 does not provide this certainty. New IOP 4.07 would not prevent the Board from tabling or deferring a Luzerne County-type investigation in the future. PMC believes the Board should take clear steps – and make those steps public – to adopt and implement a policy that will ensure that the Judicial Conduct Board will never again cede its jurisdiction and abandon or delay exercising its duty to protect the people of Pennsylvania.

There are other provisions of the new IOPs that also raise concerns, particularly IOP 5.01 regarding confidentiality and IOP 2.15 regarding recusal. We are choosing to focus only on the deferral policy at this time, however, because PMC believes it may very well be partially responsible for permitting the corruption in Luzerne County to continue as long as it did.

In conclusion, Pennsylvanians for Modern Courts requests that, to the extent IOP 4.07 or any other Board rule or policy permits the Judicial Conduct Board to defer investigations into judicial misconduct in office during criminal investigations, the Judicial Conduct Board amend its IOPs, rules, or policies so that they do not permit deferral of or prevent investigations into charges alleging or potentially involving judicial misconduct in office.

Unless the Board takes these steps, we cannot be confident that the Board has the procedures in place to prevent a Luzerne County-type tragedy from occurring again.

Very truly yours,



Lynn A. Marks
Executive Director



Shira J. Goodman
Deputy Director

Enclosure

cc: Joseph A. Massa, Jr., Esquire
Paul Titus, Esquire