

# BAILIWICK NEWS

Volume 2 Issue 13 – April 20, 2018

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## **PA Supreme Court Office of Disciplinary Counsel, Petition for Discipline regarding former Centre County District Attorney Stacy Parks Miller.** *Continuation of April 19 edition.*

By Katherine Watt

On August 16, 2017, the Disciplinary Board of the Pennsylvania Supreme Court published a Feb. 22, 2017 “Petition for Discipline” against former Centre County District Attorney Stacy Parks Miller, and scheduled a disciplinary hearing for Nov. 29, 2017.

The hearing was later postponed, and is now scheduled for Monday, April 23, 2018.

### *Disciplinary Structure*

Pennsylvania attorneys are subject to supervision by the Disciplinary Board of the Pennsylvania Supreme Court. The Disciplinary Board’s mission is “protecting the public, maintaining the integrity of the legal profession, and safeguarding the reputation of the courts.”

Staff in the Office of Disciplinary Counsel (ODC), led by Chief Disciplinary Counsel Paul Killion, investigate and prosecute attorney misconduct.

Under the disciplinary rules, an attorney found to have engaged in misconduct – violations of the Rules of Professional Conduct – may be subject to up to eight sanctions including disbarment; suspension for up to five years; public censure with or without probation; probation under Disciplinary Board supervision; public reprimand with or without probation; private reprimand with or without probation; private informal admonition; and/or law license revocation.

### *General Findings in ODC v. Parks Miller, 32 DB 2017*

Disciplinary Counsel Anthony Czuchnicki drafted the Petition for Discipline against Parks Miller, noting several times that the investigation found evidence Parks Miller “engaged in conduct which undermines the integrity of the criminal justice system and is prejudicial to the administration of justice.”

The petition included six cases involving Parks Miller’s *ex parte* communications with judges during criminal prosecutions, and three sections regarding her creation and use of a fake Facebook account – the “Britney Bella” account – to improperly investigate criminal defendants.

During his investigation, Czuchnicki obtained and reviewed emails and portions of texts sent by Parks Miller to Centre County Court of Common Pleas Judges Bradley Lunsford and Jonathan Grine, and Facebook records.

The Czuchnicki Petition presented that evidence and concluded that Parks Miller had repeatedly violated at least 13 Rules of Professional Conduct between May 2011 and the date of the petition, including:

- 3.5(a): Seeking to influence judges by means prohibited by law;
- 3.5(b): Communicating *ex parte* with judges during proceedings without authorization by law or court order;
- 4.1(a): Making false statements of material fact or law to a third person in the course of representing a client
- 4.3(a): Implying that she was disinterested in dealing on behalf of a client with a person not represented by counsel
- 4.3(c): Failing to make reasonable efforts to correct an unrepresented person’s misunderstanding of her role
- 5.3(b): Failing to make reasonable efforts to ensure that non-lawyers under her direct supervisory authority engaged in conduct compatible with the professional obligations of attorneys
- 5.3(c)(1) and 5.3(c)(2): Ordering, ratifying, and/or failing to avoid or mitigate conduct of non-lawyers that would be a violation if engaged in by a lawyer;
- 8.1(a): Knowingly making false statements of material fact in connection with a disciplinary matter;
- 8.1(b): Knowingly failing to respond to a lawful demand for information from a disciplinary authority, in connection with a disciplinary matter;
- 8.4(a): Violating or attempting to violate the Rules of Professional Conduct, and/or knowingly assisting or inducing others to do so;
- 8.4(c): Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;
- 8.4(d): Engaging in conduct prejudicial to the administration of justice;
- 8.4(f): Knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

### *Specific Findings*

#### **Commonwealth v. Justin Cluck**

The petition outlined Parks Miller’s actions, reporting that she exchanged emails with Judge Lunsford on Feb. 1, 2013 regarding a bail order, without copying Cluck’s defense counsel, Christopher Sheffield.

The petition further noted that, when formally asked by disciplinary counsel in June 2015 about her actions in the Cluck matter, Parks Miller denied – in a verified

document – any intent or contemporaneous knowledge that she was engaging in *ex parte* communications, which Czuchnicki found implausible given (among other reasons) the informality of the messages, and Parks Miller’s use of the “u” pronoun to refer to Lunsford.

He concluded, therefore, that Parks Miller had “knowingly and/or recklessly made a false statement of material fact” in connection with the disciplinary matter.

In other words, she lied about her conduct.

In Re: Patrick Horan

The petition reported that Parks Miller sent an email solely to Judge Lunsford, after Horan had filed a *pro se* (representing himself, without an attorney) petition against Parks Miller, and after Judge Lunsford had scheduled a hearing on the matter.

In response to Parks Miller’s exhortations by *ex parte* email on May 14, 2014, in which she expressed extreme indignation at the prospect of being required to “answer to” a “*pro se* inmate” about “complaints he filed about guards,” Judge Lunsford cancelled the hearing. On June 2, 2014, he denied Horan’s petition with prejudice, meaning Horan was blocked from re-filing.

When questioned in June 2015, Parks Miller admitted that her email had been sent *ex parte* and in error, adding that it was sent “in frustration.”

Commonwealth v. Mathew Shirk

The Czuchnicki petition reported that – after messages were deleted from Parks Miller’s phone “on an unknown date” – investigators forensically recovered the first 30 characters of 15 outgoing texts sent by Parks Miller to Judge Jonathan Grine between 8:55 a.m. and 9:45 a.m. on May 14, 2013.

The messages were sent after Shirk’s trial and before his sentencing.

Defense counsel Brian Manchester was not included on the messages.

Six of the messages related to the Shirk matter, including one which began “As part of restitution you sho[uld]...”

At Shirk’s sentencing July 7, 2014, Judge Grine required restitution.

Commonwealth v. Omar Best

The petition reported that forensic technicians recovered the first 30 characters of an outgoing text sent by Parks Miller to Judge Lunsford and Assistant District Attorney Nathan Boob – but not to defense counsel – moments after a hearing in the Best matter ended at 1:24 p.m. on May 19, 2014. Later that afternoon, Judge Lunsford entered an order on a Commonwealth motion, in the Commonwealth’s favor.

Disciplinary Board investigators raised the issue in a January 2015 formal request for a response, and also asked Parks Miller to produce “all text messages sent between [Parks Miller] and...Judge Lunsford.” Parks Miller did not

turn over the text messages, which the Office of Disciplinary Counsel later “independently obtained.”

In her February 2015 response, Parks Miller claimed that none of the text messaging “involved any pending criminal matter” and that she did not “have access to any of the text messages at issue.”

Czuchnicki found her responses were “directly contradicted by the fact that Respondent should have, and in fact did have, access to the county-owned work phone, work computer, and work iPad, as well as her personal phone.”

Disciplinary Board investigators sent a followup request in June 2016, quoting the text message portion that they had (by that time) obtained independently.

Parks Miller replied that she had “no recollection” that Judge Lunsford was the intended recipient, a claim that was contradicted by her use of the pronoun “he” in the text, referring to ADA Boob, the only other recipient of the text message apart from Judge Lunsford.

The petition concluded that she had failed to respond to a lawful demand for information by investigators and lied to investigators about the matter.

Commonwealth v. Jalene McClure

The Czuchnicki petition reported on an on-the-record discussion during an Oct. 30, 2014 hearing on defense attorney Bernie Cantorna’s motion for Judge Lunsford to recuse himself in the McClure matter, covered in detail in prior *Bailwick News* reporting. Cantorna had, by that time, become aware of the history of *ex parte* texting between Centre County prosecutors and judges.

Parks Miller stated at the hearing, regarding Cantorna’s allegations of text messaging, “I am not dignifying them. He has to bring forth proof...,and, notably, I expect him not to because there is none.”

Judge Lunsford stated at the hearing, “There are no text messages between me and these two. I swear to God...There are no emails – well you are going to find emails because we are always attached on emails but you are not going to find any email that is inappropriate that relates to this trial or any trial whatsoever. They’re not there.”

Czuchnicki described Parks Miller’s false on-record statements as “conduct involving dishonesty, deceit and misrepresentation,” and further noted “[Parks Miller] knew that Judge Lunsford’s claim with respect to text messages was false...”

In her February 2015 verified response to the Disciplinary Board’s January 2015 request for response, Parks Miller claimed she “had no recollection” of her prior texting with Judge Lunsford, and repeated her failure-to-recall claim in a follow-up response in August 2016.

Commonwealth v. Michele Hoy

The Czucknicki petition reported on a similar recusal hearing, sought by Public Defender Patrick Klena on behalf of Hoy, and held Nov. 21, 2014.

In his motion, Klena stated that 62 text messages had been exchanged between Parks Millera nd Lunsford.

Parks Miller, again on the record, stated that Klena had “no evidence or proof” and that “never has this court had *ex parte* conversations about any cases.”

In responding to subsequent Disciplinary Board questioning, Parks Miller repeated her “no recollection” claims.

“Britney Bella”

The Czucknicki petition reported that Parks Miller created a fictitious Facebook account under the name “Britney Bella” sometime around May 16, 2011, and that on May 17, 2011, she sent an email to her staff – assistant district attorneys and support staff – stating she had “made a facebook page that is fake for us to befriend people and snoop...use it freely to masquerade around facebook...use it to befriend defendants or witnesses if you want to snoop.”

In responding to later Disciplinary Board questioning in January/February 2015, Parks Miller stated she didn’t believe “she would have used language in the nature described,” and claimed that the fake Facebook page was a “proper law enforcement operation” whose “exclusive purpose” was to facilitate “self-identification” of drug sellers, noting that the operation led to store raids and store owner prosecutions.

Office of Disciplinary Counsel investigators identified a series of stores raided in February 2012, and pointed out that the fake Facebook page remained active for several years after the February 2012 raids and was subsequently used “to search for, and connect to, individuals who had no connection to drug-related activity.”

Czuchnicki concluded that Parks Miller had, again, knowingly and/or recklessly lied to Disciplinary Board investigators, personally engaged in dishonest and deceitful conduct, and induced her staff to do the same.

The report went on to outline two specific cases - *Commonwealth v. Samuel Hill* from May to November 2012, and *Commonwealth v. Jalene McClure* from September to November 2012 – during which individuals using the Britney Bella account “friended” defendants and witnesses without disclosing their true identities or their interest in the criminal matters.

The report stated that investigators had identified at least 41 people people who were “friends” with Britney Bella and had criminal records (some non-drug related, some drug-related) or were related to someone with a criminal record.

At least two were sent friend requests while the DA’s office had open criminal cases against them.

Czuchnicki concluded his petition with a request that the Disciplinary Board appoint a Hearing Committee to hear testimony and receive evidence in support of the charges, and then make findings of fact, conclusions of law, and recommendations for disciplinary action.

## CRITICAL ANALYSIS

Parks Miller committed her violations of the Rules of Professional Conduct while acting as a public official – the “chief law enforcement officer” of Centre County.

As a result, unlike a private attorney, the damage she has inflicted on victims is both private and public.

She placed herself at the epicenter of a group of corrupt individuals – county prosecutors and judges – who willfully compromised the integrity of the entire county judicial system.

She also placed herself at the center of a ring of disciplinary attorneys and state judges from Philadelphia to Pittsburgh who were notified about the preliminary evidence of misconduct and turned a blind eye, or facilitated cover-ups by slow-walking investigations and sealing records and hearings that would have allowed citizens and journalists an earlier, fuller opportunity to hold Parks Miller and her cohorts accountable.

As a result, many hundreds of people – including criminal defendants, their families, victims of crime and their families, whistleblowers and civil litigants subjected to Parks Miller’s retributive lawsuits – have been grievously harmed, first by the miscarriage of justice and abuse of power, and then by the impunity granted to those who misused their power by those purportedly responsible for supervising them.

Much of that suffering was preventable, had the Supreme Court acted more swiftly.

Recovery from the damage in Centre County will take years, if the damage can be repaired at all. Many Centre County residents believe with good reason that our judges are corrupt, that cases are fixed, and that our chief law enforcement office is above the law, not held accountable for crimes as ordinary citizens are.

With good reason, we do not believe our judicial system is fair and impartial, nor that it even has the appearance of being fair and impartial.

I hope our new district attorney and our current judges can and will try to rebuild public trust. I hope they, and the county citizens they serve, get the full and public support of the Disciplinary Board, through open, public disciplinary proceedings that result in sanctions commensurate with the harm done.

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KW INVESTIGATIONS LLC  
156 W. Hamilton Ave.  
State College PA 16801  
(814) 237-0996

kw.investigations.llc@gmail.com  
bailiwicknews.wordpress.com