

## Grievance Supplement

Lori Brown  
Office of Disciplinary Counsel

Re: Hon. Amy J. Berling

Dear Ms. Brown:

Please consider this correspondence a supplement to the letter sent to you via e mail on February 15, 2012 from the judges of the Toledo Municipal Court asking for your office's assistance with our colleague, Hon. Amy J. Berling.

As indicated in that prior correspondence, Judge Berling's conduct has caused the undersigned great concern. To varying degrees (based upon the respective length of service of each of us on the bench of this court), we have witnessed behavior that causes us to fear for the physical and mental safety not only of ourselves, but, more importantly, of the employees over whom we have responsibility. This supplement and its attachments will attempt to chronicle the most aberrant behavior, but truly until it is witnessed, words come short of describing the effect Judge Berling's mania has on the functioning of the court. Moreover, Judge Berling's behavior contravenes the court's policies on workplace harassment and safety, which we are bound to enforce.

Judge Berling's disturbing conduct has been cyclical in nature. There are periods of outright confrontational onslaught, characterized by Judge Berling's threatening of employees, either directly or veiled, that failure to abide by her directives, irrespective of court policy, will result in detriment to employment. These periods are followed by longer periods of relative quiet and absence from court. Intermingled among both variations of behavior are after-hours telephone calls to judges, staff, and others featuring long monologues of a 'stream-of-consciousness' nature where Judge Berling randomly muses about any number of topics related to court and personal affairs. The content of her ramblings is often factually inaccurate and gossip-mongering. The intensity of these cycles has increased over time.

The effects of this behavior are highly disturbing to all. As noted in our e mail, Judge Berling's secretary had to be escorted to her car to leave work early, having endured a migraine headache and vomiting caused by Judge Berling's mania. Our court's administrator, an Army JAG officer, was reduced to tears upon Judge Berling's threat to report her alleged insubordination to disciplinary counsel. The undersigned had to vacate the bench and eventually order the administrator, C. Lisa Falgiano, to have no contact with Judge Berling. Memoranda regarding this and related matters are attached.

As mentioned, Judge Berling's recent behavior has been of an increased intensity, but has followed the same pattern seen by her colleagues and staff for some time. Recent external events may have had an aggravating effect, and thus it might be beneficial to provide a

bit of background. In the past few weeks, the local newspaper, The Blade, has been conducting an investigation into the behind-the-scenes conduct of our court.

Specifically, The Blade has been investigating the number of vacation, sick, and other days taken by the seven judges of this court. A front-page Sunday story alleged two of the court's judges took more days off than allowed. This story was followed by another piece chronicling the alleged bickering among judges, particularly Judges Berling and Christiansen. An editorial followed these two stories, as well as a public records request for all memoranda among the judges for the past several months.

As noted above, we have enclosed copies of various memoranda which detail dealing with Judge Berling's behavior. We also enclose, for reference, allegations made against Judge Berling on behalf of the court by the Presiding Judge over the past several years. These allegations were referred to the OSBA, which delegated investigatory responsibility to Howard Besser. The grievances were dismissed with the suggestion that mediation might help.

In 2007, the late Chief Justice, Thomas Moyer, asked former federal judge Richard McQuade to mediate the matters at our court. He gave up quickly. An intervention was attempted with the assistance of OLAP. It failed. In short, we have tried everything, and are left with no resort.

The morning of Judge Berling's threat to Lisa Falgiano, the judges conference-called OLAP for help. A follow-up call that same day suggested we contact Disciplinary Counsel as we now have, and further indicated as follows:

1. Judge Berling is "very mentally ill."
2. When Judge Berling is in "attack mode," we are instructed to cease conversing with her immediately and walk away.
3. All communications with Judge Berling must be in writing so that she cannot twist what was discussed orally.
4. All incidents of conduct causing concern are to be documented.
5. Attempt to enforce the court's workplace safety/anti-harassment policy.

When confronted with concern for the physical safety of court staff, stakeholders, and judges, we were advised that since nobody can say with certainty what Judge Berling might do, she is to be considered physically threatening. Judge Berling never has physically assaulted or threatened to assault anyone, as far as we know.

While all of this is happening, Judge Berling's former law clerk has threatened suit against us for terminating his employment. The relevance of this is that Judge Berling has made clear her belief that he was fired improperly, and this is further alleged evidence that everyone is against her. Materials documenting this matter are also enclosed. They help demonstrate a broader point: that Judge Berling continually positions herself as the victim of harassment, bullying, exclusion, and siege.

As noted above, the undersigned judges have witnessed Judge Berling's behavior for varying amounts of time. Some of the foregoing (and some of the documents appended) describes conduct that the newer of us judges have not directly seen. The investigation we request would be able to differentiate what specific instances of conduct were witnessed by whom. But upon instructions we submit this supplement jointly in order to demonstrate our collective concern.

Our court cannot continue to do business in this environment. Our employees cannot dread coming to work and being dragged into Judge Berling's drama. We restate the request for assistance made in our correspondence of February 15, 2012, and stand ready to assist in any way we can.

Respectfully,

---

Hon. Robert G. Christiansen

---

Hon. William M. Connelly, Jr.

---

Hon. Michael R. Goulding

---

Hon. Timothy C. Kuhlman

---

Hon. C. Allen McConnell

---

Hon. Michelle A. Wagner

Read & Approved:

- MW

- JCK

# TOLEDO MUNICIPAL COURT

555 N. Erie Street  
Toledo, Ohio 43604

MICHAEL R. GOULDING  
*Presiding Judge*

419-245-1942 telephone  
419-245-1802 fax

## MEMORANDUM

TO: All Court Staff, Security Staff, and Clerk of Court Staff

FROM: Presiding Judge Michael R. Goulding  
Judge Robert C. Christiansen *RBC*  
Judge William M. Connelly *WMC*  
Judge Timothy C. Kuhlman *TK*  
Judge C. Allen McConnell *CAM*  
Judge Michelle A. Wagner *MW*  
Vallie Bowman-English, Clerk of Court *VBE*

RE: New Court Policy

DATE: February 28, 2012

Pursuant to the Ohio Rules of Superintendence and our duty to enforce court policies, we order the following:

All staff is prohibited from having any contact and communication with Judge Amy Berling of any kind at all times. Each instance of contact and/or communication with Judge Berling shall be memorialized as soon as possible and provided to the Court Administrator or Human Resource Officer. Such memos shall include the time, date, and substance of each instance of communication, and include any instance of attempted communication. All staff is further directed to politely inform Judge Berling, if contacted by her in contravention to this order, as follows: The judges of the court have prohibited me from communicating with you. I am sorry, but I must terminate this call/discussion/etc.

Realizing that the work of the court must get done nonetheless, communications otherwise prohibited above may be had only if they pertain to Judge Berling's cases, entries on said cases, and the like. If the communication does not so pertain, it is prohibited. If the communication is of a mixed nature, involving both excepted and non-excepted matters, the entire communication is to be memorialized as outlined above. Additionally, Judge Berling will maintain her secretarial support for dictation, mailing, etc. Any attempt by Judge Berling to countermand these directives, past or present, is hereby nullified. Please see court administration or one of us if you have any questions or concerns regarding this matter. This protocol shall remain in place until further order.

We are sorry that our staff has been thrust into the middle of this unfortunate circumstance. We appreciate your service, your discretion, and your patience. We make this order with great regret, but also with great deliberation and concern for all court staff.

MRG/jk

# TOLEDO MUNICIPAL COURT

555 N. Erie Street  
Toledo, Ohio 43604

MICHAEL R. GOULDING  
*Presiding Judge*

419-245-1942 telephone  
419-245-1802 fax

## MEMORANDUM

TO: Judge Amy J. Berling

FROM: Presiding Judge Michael R. Goulding  
Judge Robert C. Christiansen *RC*  
Judge William M. Connelly *WMC*  
Judge Timothy C. Kuhlman *TK*  
Judge C. Allen McConnell *CAM*  
Judge Michelle A. Wagner *MAW*

RE: New Procedure

DATE: February 28, 2012

Once again your behavior has consumed a significant amount of time for me, the judges, and court staff.

On February 27, 2012, at about 1:45 pm, you reportedly called to scold Cheryl for entries she made in the Attendance Record (a/k/a the "Red Book"). Apparently this call coincided with a meeting Judge Christiansen had just had with Ignazio Messina from The Blade, wherein Judge Christiansen had shown him the Red Book and its recent entries regarding your absence from court last week and this week. It is further reported that you called into question Cheryl's honesty by claiming that you told her not to write anything in the Red Book until your return, despite your previous instruction to Cheryl that she could make such entries for the week of 2/21 to 2/24. No memo has been circulated regarding your entire absence, causing scheduling difficulties as noted in my memo of yesterday.

Then, you advised Cheryl to write on each page of the Red Book from 2/21 through 3/1 that no memo was to issue regarding your absence from court "due to threat of execution from the jail." Cheryl was also instructed to attach a copy of your 2/15/12 memo to the Red Book. (A copy of this memo is attached.) Dorlisa provided the AC with a copy of the memo for you.

Regarding this alleged threat, the records indicate the following. At the January 14, 2012 Saturday arraignment court over which you presided, Defendant Gale Laffey appeared with various charges of disorderly conduct, open container, and public indecency. He appeared "extremely intoxicated when appearing for arraignment," and was described as suffering from mental health issues. You set an OR bond on 6 of the 8 charges, and continued the bench warrant bond on the others, which totaled \$1,250.00. On January 19, 2012 C/O Mysinger heard the defendant "holler[] demands for a bath and time out of his cell [in the medical unit]. He said 'I

need to shave. I'm not fucking around with this judge. I will have her executed.'" D/S Coleman advised you of this matter at about 10:15 am the same day, further indicating Mr. Laffey was scheduled for release January 24, 2012, and asked whether you wanted him held in custody pre-trial through order of the Special Master (a/k/a a "Doyle Hold"). You declined this offer. You later changed your mind and ordered a Doyle Hold around noon that day.

The Court Administrator was made aware of the situation. You declined to meet and discuss a personal safety plan. You left it to law enforcement to decide whether to bring a charge against Mr. Laffey. You were provided a copy of a memo dated January 24, 2011 indicating how such issues have been handled in the past. This memo outlined such steps as distributing the offender's photograph throughout the building, briefing security staff, and requiring a deputy escort for any time the offender was present in the building. You declined to request that anybody take these or any other measures. Independently, Lisa Falgiano requested a threat assessment of Mr. Laffey. He was deemed a "Low Level" risk.

Now you have ordered Cheryl to alter the records contained in the Red Book to attempt to demonstrate that the purported reason behind not telling anybody that you will be absent is due to a fear of a threat of execution made by an inmate of the jail. I am aware of no other "recent threat of execution by an inmate" but for Mr. Laffey's, and you demonstrated no amount of concern about that threat at the time, but for the ordering of a Doyle Hold after refusing to do so earlier the same day. When this is considered contemporaneously with the reporter's investigation and presumed call to you for clarification, it appears that you have, essentially, asked Cheryl to alter a court record with information that is at least a bit dubious.

The judges met to discuss this matter and we are ordering all court staff to have no contact with you under the following protocol. While on the bench, staff may communicate with you only on matters regarding cases before you. Off the bench, Dorlisa has been ordered to type your letters via the Philips dictation handheld you have been provided. She will deposit drafts in your mailbox for your review, correction, etc. and will make such alterations for you as needed. She may provide assistance with faxing and other court-business-related assistance, and will be required to document such instances of contact with you. All other staff have been directed not to have any contact with you, directly or indirectly, except regarding specific matters pertaining to a case on your docket. They have been further instructed by us to politely respond to you as follows: The judges have ordered that I not have any contact with you. I am sorry but I must terminate this call/discussion, etc. All instances of staff contact with you are to be memorialized and provided to the Presiding Judge. This order encompasses all judges' division employees, clerk employees, and security staff until further order.

We have an obligation to maintain a work environment free of harassment, threats, and undue stress. Your actions over the past number of weeks, as well as over the past number of years, force us to take this drastic action to protect our staff and to insulate us from liability to the extent possible. Questions, concerns, etc. may be directed to either the Presiding Judge or the Acting Presiding Judge. We admit this is an imperfect solution, and will likely need to amend and clarify it as time elapses and circumstances dictate.

MRG/jk

cc: Lisa Falgiano, Court Administrator  
Attachments

02/27/12 @ 2:15 PM

I received a telephone call from Judge Berling. She stated that she was not happy that I had written her name in the "Book" with a notation "No Memo." She stated that she had told me not to put anything in the "Book" until she returned. I advised her that no memo had been sent out per her instructions, but that she had given me permission to write her name in the book for Feb 21-24. She again stated that I had written her name in the book, against her orders.

(I had previously asked her if I should put her name in the Book (indicating that she was to be off) and she answered that I could for February 21 through February 24. When I asked her about the following week, February 27 through March 2, she advised that she would definitely be here on March 2, but she did not yet know about the rest of the week. I had written nothing for Feb 27-Mar 1)

She then advised me that I was to write: "No memo due to the threat of execution from the jail" on each page from February 21 through March 1 and that I was to attach to each page a copy of her memo telling me not to send memos until her return.

She advised me that Judge Christiansen had sent out a memo regarding the entry in the book. She also stated that the Blade was going to be here on Friday to look at the book.

She told me she should not have taken a vacation because it certainly was not a vacation with all this happening. She ended by saying she appreciated me making the notations in the book as she was asking.

About ten minutes after this phone call, Dorlisa Daniels asked me for a copy of Judge Berling's original memo stating that no memos to go out until her return (copy attached).

Cheryl A. Smith 