

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2586 Disciplinary Docket No. 3
: :
Petitioner : No. 195 DB 2018
: :
v. : Attorney Registration No. 42469
: :
DAWN A. SEGAL, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 9th day of April, 2019, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and Dawn A Segal is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all of the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

Justice Dougherty did not participate in the consideration or decision of this matter.

A True Copy Patricia Nicola
As Of 04/09/2019


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
: Petitioner : No. 195 DB 2018
: :
v. : :
: :
DAWN A. SEGAL, : Attorney Registration No. 42469
: :
Respondent : (Philadelphia County)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

OFFICE OF DISCIPLINARY COUNSEL

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and

Dawn A. Segal, Esquire
Respondent
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FILED
03/04/2019
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
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JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and James M. Fox, Disciplinary Counsel, and Dawn A. Segal, Respondent, and Stuart L. Haimowitz, Esquire, Counsel for Respondent, files this Joint Petition In Support Of Discipline On Consent, under Rule 215(d), Pa.R.D.E. and respectfully represents as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to

prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Dawn Segal, was born November 19, 1959. She was admitted to practice law in the Commonwealth of Pennsylvania on November 9, 1984.

3. Respondent's attorney registration mailing address is 6401 Wissahickon Avenue, Philadelphia, PA 19119.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

5. Respondent previously served as a Judge in the Municipal Court of Philadelphia from January 4, 2010 until February 2, 2016, at which time she was suspended pending a complaint filed by the Judicial Conduct Board.

6. Upon the filing of formal charges by the Judicial Conduct Board, a trial was held in the Court of Judicial Discipline, commencing on January 28, 2016.

7. Upon conclusion of the trial, and by an Opinion dated July 21, 2016, the Court of Judicial Discipline found that the Respondent violated the following judicial canons and constitutional provisions:

(a) Canon 2B of the former Code of Judicial Conduct which provided, in relevant part:

Judges should not convey or knowingly permit others to convey the impression that they are in a special position to influence the judge.

(b) Canon 3A(4) of the former Code of Judicial Conduct, which provided, in relevant part:

Judges . . . except as authorized by law, must not consider *ex parte* communications concerning a pending matter.

(c) Canon 3B(3) of the former Code of Judicial Conduct, which provided:

Judges should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge becomes aware.

(d) Canon 3C(1) of the former Code of Judicial Conduct, which provided, in relevant part:

Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned but not limited to instances where:

(a) They have a personal bias or prejudice concerning a party . . .

(e) An automatic, derivative violation of Article V, §17(b) of the Constitution of the Commonwealth of Pennsylvania, inasmuch as it has been found that Respondent's conduct constituted violations of former Canons 2B, 3A(4), 3B(3) and 3C(1) of the former Code of Judicial Conduct.

(f) Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania, conduct such that prejudices the proper administration of justice.

(g) Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania, conduct such that brings the judicial office into disrepute.

8. A sanctions hearing was held on November 21, 2016. By Order of the Court of Judicial Discipline, dated December 16, 2016, Respondent was removed from office and deemed ineligible to hold judicial office in the future.

9. On appeal, the Pennsylvania Supreme Court affirmed the decision of the Court of Judicial Discipline in, *In Re: Dawn A. Segal, Municipal Court Judge First Judicial District Philadelphia County*, 173 A.2d 603 (Pa. 2017).

10. Respondent resumed the practice of law, having filed her Administrative Change in Status, to active, with the Pennsylvania Attorney Registration Office on December 30, 2016.

11. Respondent's Affidavit stating her consent to the recommended discipline is attached as Exhibit A.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

12. Respondent became familiar with former Municipal Court Judge Joseph C. Waters, Jr., in 2009 when both the Respondent, and former Judge Waters, were judicial candidates for the Philadelphia Municipal Court.

13. Respondent viewed herself as an outsider to the world of Philadelphia politics, however, she viewed former Judge Waters

as someone who was knowledgeable in the political process and politically well connected.

14. Respondent intended to run for retention on the Philadelphia Municipal Court in the 2015 election, but had concerns that she would not have the backing of the Democratic Party.

15. The Philadelphia Inquirer published an article on September 30, 2011, which quoted Democratic Party leaders as stating that judges running for retention, who wanted the backing of the Democratic Party, needed to contribute money to the party.

16. On September 30, 2011, the same day the article appeared in the Philadelphia Inquirer, Judge Joseph Waters, of the Philadelphia Municipal Court, called Respondent.

17. During that telephone conversation, Respondent discussed the Philadelphia Inquirer article, and her concerns over her retention election, with Judge Waters.

18. Respondent told Judge Waters that the outspoken Democratic leader, quoted in the article threatening judges, was the same person who previously threatened her for not supporting the Democratic Party.

19. Judge Waters told Respondent not to worry and that he had the support of twenty one (21) ward leaders who would back Respondent's retention campaign.

20. In the same conversation, Judge Waters told Respondent "I have a guy - I have a guy on the list today."

21. Respondent and Judge Waters then engaged in a conversation regarding the case of *Houdini v. Donegal* which was on Respondent's docket for that day.

22. As a result of an ongoing federal investigation against Judge Waters, his telephone conversations were being intercepted.

23. The following exchange (as transcribed by the Judicial Conduct Board from the FBI recording) took place during that telephone call on September 30, 2011 between Respondent and Judge Waters:

Former Judge Waters: I got something in front of you at 1:00 today.

Judge Segal: Okay. Tell me. What is it?

Former Judge Waters: The name's Donegan (sic). Okay?

Judge Segal: Okay.

Former Judge Waters: Ah, it's ... it's something to do with an alarm company. Sammy Kuttab and Sonny Campbell will be there.

Judge Segal: Okay. And uh, okay.

Former Judge Waters: You know Sam?

Judge Segal: And who do we need?

Former Judge Waters: Uh, we, we, we got the, the defendant.

Judge Segal: I'm sorry, wait, I can't hear you. What?

Former Judge Waters: I said we got the defendant, Donegan. (sic) Eh ...

Judge Segal: Oh, okay. Okay.

Former Judge Waters: Alright?

Judge Segal: Say no more. Say no more. Alright.

24. On September 30, 2011, after the telephone call with Judge Waters, Respondent heard a contested motion in the matter of *Houdini v. Donegal* wherein counsel for Donegal requested a continuance and counsel for Houdini objected.

25. Respondent granted the continuance request and ordered that the case proceed to trial without any further delays.

26. On September 30, 2011, after granting the motion to continue in the *Houdini v. Donegal* case, Respondent initiated a call to Judge Waters.

27. The following conversation (as transcribed by the Judicial Conduct Board from the FBI recording) took place between Respondent and Judge Waters:

Former Judge Waters: Hey, how ya doing?

Judge Segal: I'm good. I just want to let you know um, I continued that matter.

Former Judge Waters: Okay.

Judge Segal: But um, cause the, the 12 year old who came for your client wasn't ready, they opposed it, but I marked it "must be tried" because they were really ...

Former Judge Waters: Okay.

Judge Segal: ... jumping up and down. But I did continue and I gave them a long date so hopefully that's enough for them.

Former Judge Waters: Okay, cool.

Judge Segal: Alright ...

Former Judge Waters: Alright.

Judge Segal: ... I did the best I could.

Former Judge Waters: I,I,I know you do, believe me and I appreciate it.

Judge Segal: All for you. Anything. Alright..

28. On June 12, 2012 Respondent was assigned to hear a *pro se* Petition to Open Default Judgment in the case of *City of Philadelphia v. Rexach* which she denied for failure to set forth a meritorious defense.

29. On June 29, 2012, Judge Waters contacted Respondent and told her he had a friend (Rexach) who filed a Petition for Reconsideration as a result of Respondent having previously denied his Petition to Open Default Judgment.

30. The defendant in the case, Ian Rexach, was the son of then (now former) Judge Angeles Roca of the Philadelphia Court of Common Pleas.

31. Respondent granted the Petition for Reconsideration filed by Rexach and initiated a call to Judge Waters on Sunday, July 1, 2012.

32. While the substantive issue of whether there was a legal basis to open the default judgment was not before Respondent, she did grant the Petition for Reconsideration and issued a Rule to Show Cause.

33. During the call on July 1, 2012, Respondent stated the following to Judge Waters (as transcribed by the Judicial Conduct Board from the FBI recording):

Former Judge Waters: Hey, what's up?

Judge Segal: Hi, I figured it out and I took care of it.

Former Judge Waters: Oh, okay. Thank you.

Judge Segal: I got it. Alright. It was on my um, queue, so I did it. So tell her it's done.

Former Judge Waters: Thank you very much, honey.

Judge Segal: Alright, you take care.

Former Judge Waters: You too ...

Judge Segal: ... for you, Alright, bye.

34. Respondent was assigned to preside over a preliminary hearing in *Commonwealth v. David P. Khoury*, scheduled for July 24 2012.

35. On July 23, 2012 Judge Waters contacted Respondent and the following telephone conversation took place (as transcribed by the Judicial Conduct Board from the FBI recording):

Judge Segal: Hello?

Former Judge Waters: Dawn, how are you?

Judge Segal: I'm good Joe, how are you?

Former Judge Waters: Good. Look Dawn, you got a case tomorrow with a Rich ... eh ... Rich Khoury. Skip Fuschino is representing him.

Judge Segal: Okay.

Former Judge Waters: See if you can take a good hard look at it. He's ah ... ah ... ah ... ah, a friend of mine.

Judge Segal: Khoury is it? Khoury's a friend of yours?

Former Judge Waters: Yeah, Rich Khoury ... ah ... Skip Fuschino. Don't hurt yourself, but if you can help him, I'd appreciate it.

Judge Segal: No, I will, if he's a friend of yours. I'll look hard at the case. Don't worry about it.

36. The defendant in *Commonwealth v. Khoury* was charged with Firearms Not to Be Carried Without a License, graded as a felony offense.

37. Respondent presided over the Preliminary Hearing on July 24, 2012 and reduced the charge from a felony offense to a misdemeanor offense.

38. The decision to grade the offense as a misdemeanor, rather than a felony, was not an uncommon outcome in similar cases heard before the Philadelphia Municipal Court, based on testimony concerning this issue, which was presented by Respondent's counsel in the Judicial Conduct Board proceedings.

39. Respondent then telephoned Judge Waters and stated the following (as transcribed by the Judicial Conduct Board from the FBI recording):

Judge Segal: I... ah... um... remanded your friend's thing.

Former Judge Waters: I appreciate that. You're the best.

40. On May 15, 2014 and June 3, 2014, as part of an ongoing investigation, Respondent was interviewed by Assistant United States Attorneys Richard Barrett and Michelle Morgan and FBI Special Agents Eric Ruona and Chad Speicher.

41. Respondent admitted that she was concerned about her retention election and wanted Judge Waters to assist and support her.

42. Respondent was aware that Judge Waters was influential in the Democratic Party and she tried to keep him happy.

43. Respondent admitted that she believed Judge Waters was trying to influence her when he called her about the *Houdini v. Donegal* case.

44. Respondent admitted that the phone calls with Judge Waters were inappropriate.

45. Respondent admitted that she understood when Judge Waters asked her to "take a good hard look at it (*Khoury*)" he was trying to influence her.

46. Respondent admitted that Judge Waters' request in *Khoury* was to make a substantive decision and that she should have recused herself from the case.

47. Respondent admitted that she now realizes that she should have recused herself as her impartiality might reasonably have been questioned because of that contact.

48. Respondent admitted that she engaged in repeated inappropriate communications with Judge Waters concerning matters pending before her in the Municipal Court of Philadelphia.

49. Respondent entertained the communications with Judge Waters in order to curry favor with him in her retention campaign.

50. Respondent admitted that she failed to disclose her conversations with Judge Waters to any of the parties, or counsel, in the three cases and failed to recuse herself in light of those communications.

51. Respondent admitted that she failed to report the misconduct of Judge Waters to the Judicial Conduct Board or any other authority.

52. By her conduct as alleged in paragraphs 10 through 51 above, Respondent violated the following Rules of Professional conduct:

(a) Rule of Professional Conduct 8.3(b) - A lawyer who knows that a Judge has committed a violation of applicable Rules of Judicial Conduct that raises a substantial question as to the Judge's fitness for office shall inform the appropriate authority.

(b) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

(c) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

(d) Rule of Professional Conduct 8.4(f) - It is professional misconduct for a lawyer to knowingly assist a judge or judicial officer in conduct that is in violation of applicable Rules of Judicial Conduct or other law.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of one year and one day.

Respondent hereby consents to the discipline being imposed upon her. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating she consents to the recommended discipline and includes the mandatory acknowledgments contained in Rule 215(d)(1)-(4), Pa.R.D.E.

In support of Petitioner's and Respondent's joint recommendation, it is submitted that the following mitigating circumstances are present:

- a. Respondent admits to engaging in misconduct and violating the charged Rules Of Professional Conduct;
- b. Respondent cooperated with the investigation of the Judicial Conduct Board by giving grand jury testimony against former Judge Joseph C. Waters, Jr., without any promise of immunity or legal protection;
- c. Respondent presented strong character witnesses before the Court of Judicial Discipline, all of whom testified that, as a Judge, Respondent had an excellent reputation for being a hard worker who was fair and even tempered;
- d. Respondent was removed from the Bench by the Court of Judicial Discipline and deemed ineligible to hold judicial office in the future;
- e. Respondent has cooperated with Petitioner by waiving any jurisdiction issue under Pa.R.D.E., Rule 201 and as evidenced by Respondent's admission

herein and her consent to receiving a suspension of one year and one day.

The following aggravating circumstances are also present:

- a. Respondent's misconduct occurred while serving as a Philadelphia Municipal Court Judge.

Respondent was removed from the bench by the Court of Judicial Discipline after a trial and sanctions hearing. The issue of discipline regarding the Respondent's license to practice law, however, is reserved for the Pennsylvania Disciplinary Board and the Pennsylvania Supreme Court. There are a number of disciplinary cases involving the disbarment, or suspension, of former members of the judiciary.

It is noteworthy that in the majority of the cases where a former judge was disbarred, the judge was also convicted of criminal offenses related to their misconduct. In *In Re Jules Melograne*, 812 A.2d 1164 (Pa. 2002), Melograne, who served as a district justice, conspired with court employees to affect the outcome of statutory appeals. He was convicted in federal court of conspiracy to violate civil rights. Melograne was ultimately disbarred in the disciplinary proceedings by the Pennsylvania Supreme Court.

In *Office of Disciplinary Counsel v. David J. Murphy*, 188 DB 2010 (2013), Murphy, who was a Magisterial District Judge, forged signatures on nominating petitions for his re-election. The Court of Judicial Discipline removed him from the bench. As a result of his conduct, he was charged, and pled guilty, to 64 counts of forgery and related offenses. The Pennsylvania Supreme Court disbarred him in the Disciplinary matter.

In *Office of Disciplinary Counsel v. Francis Peter Eagen, III*, 102 DB 2003 (2003), Eagen served as a Common Pleas Judge in Lackawanna County. In his role as Judge, Eagen appointed an insurance agent, with no prior estate experience, to serve as guardian of several incapacitated persons. The guardian ultimately diverted funds from those estates. Eagen was charged, and convicted, of Unsworn Falsification to Authorities and related offenses. The Court of Judicial Discipline removed Eagen from office and he was disbarred in the Disciplinary matter by the Pennsylvania Supreme Court.

Respondent's case is dissimilar to the above cases, which resulted in disbarment, in that she was not convicted of a crime, was never charged with a crime, nor engaged in any criminal activity.

There is support for this joint recommendation that Respondent be suspended for one year and one day when analogized

to *Office of Disciplinary Counsel v. Kelly S. Ballentine*, No. 142 DB 2013. Ballentine was a Magisterial District Judge in Lancaster County who was cited for parking violations by the Lancaster city police. Ballentine accessed the MDJS computer system and dismissed the citations issued against her. Ballentine was charged, and pled guilty, to 3 misdemeanor counts of Tampering with Public Records and Obstructing Administration of Law. She was suspended from her judicial duties from February 22, 2012 through May, 2013 and placed on probation by the Court of Judicial Discipline until December 31, 2014. Ballentine's license was suspended for a period of one year on a Joint Petition in Support of Discipline on Consent, which was recommended by the Disciplinary Board and granted by the Pennsylvania Supreme Court.

There are both similarities and differences between Respondent's case and *Ballentine*:

- a. While serving as a Magisterial District Judge, Ballentine engaged in misconduct that benefited herself, i.e., she accessed the MDJS system and dismissed citations issued against herself. Likewise, Respondent, in her role as a Municipal Court Judge, engaged in misconduct that benefited herself, i.e., she entertained requests from former Judge Waters as she sought his support, and that of the Democratic Party, in her retention campaign;

- b. Ballentine, however, acted alone while Segal's misconduct involved a fellow Municipal Court Judge;
- c. Ballentine pled guilty to criminal charges of tampering with Public Records and Obstructing Administration of Law, which serves as an automatic basis for discipline pursuant to Pa.R.D.E. 214. Respondent was never charged, nor convicted, with any criminal offense;
- d. In the Judicial Conduct Proceedings, Ballentine was suspended from the bench for fifteen (15) months and placed on probation for eighteen (18) months. Respondent, however, was removed from the bench and deemed ineligible to hold judicial office in the future.

While there are variances between Ballentine and Respondent's case, in looking at all of the factors, and the sanctions imposed by the Court of Judicial Discipline, there is support that a one year and one day suspension is appropriate in Respondent's case, and will subject Respondent to the requirements of reinstatement pursuant to Rule 218, Pa.R.D.E.

Finally, the other issue to consider in determining appropriate discipline are the purpose and goals of the Attorney Disciplinary System. In *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231 at 1238-1239 (Pa. 2012) the court noted "the primary function of the attorney disciplinary system is not

punitive in nature, but is to determine the fitness of an attorney to continue the practice of law and maintain the integrity of the legal system. The disciplinary system serves to protect the courts and the public from unfit attorneys." See also, *Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186 (Pa. 1983)

In Respondent's case the Court of Judicial Discipline took action to maintain the integrity of the legal system by removing Respondent from the bench and barring her from holding judicial office in the future. The misconduct to which Respondent admits was not the type of misconduct that endangered clients. Many discipline cases involve an attorney stealing or misappropriating client funds, in which case the disciplinary system should, and must, protect clients and the public, from harm caused by an unscrupulous attorney. Additionally, many discipline cases involve an attorney being convicted of criminal offenses which may require the system to protect clients and the public, from harm caused by an attorney. Respondent's misconduct, of entertaining requests from former Judge Waters, to aid her own retention campaign, is deserving of discipline. In light of the nature of Respondent's misconduct, however, a one year and one day suspension would be appropriate to protect the public and preserve the integrity of the system, without being unduly punitive.

WHEREFORE, Petitioner and Respondent respectfully request

that, pursuant to Rule 215(e) and 215(g), Pa.R.D.E., the three member panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent for the imposition of a one year and one day suspension from the bar of the courts of this Commonwealth.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By James M. Fox
James M. Fox
Disciplinary Counsel

and

By Dawn A. Segal
Dawn A. Segal
Respondent

and

By Stuart L. Haimowitz
Stuart L. Haimowitz, Esquire
Counsel for Respondent

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VERIFICATION

The statements contained in the foregoing Joint petition In Support Of Discipline On consent Under Rule 215(d), Pa.R.D.E. are true and correct to the best of my knowledge, information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to Unsworn Falsification to Authorities.

3-4-19
Date

James M. Fox
James M. Fox
Disciplinary Counsel

2/25/19
Date

Dawn A. Segal
Dawn A. Segal
Respondent

2/25/19
Date

Stuart L. Haimowitz
Stuart L. Haimowitz, Esquire
Counsel for Respondent

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AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Dawn A. Segal, hereby states that she consents to a one year and one day suspension, as jointly recommended by Petitioner, Office of Disciplinary Counsel and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

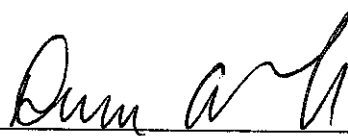
1. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress; and she is fully aware of the implications of submitting the consent; and she has consulted with counsel in connection with the decision to consent to the imposition of discipline;

2. She is aware that there is a pending proceeding involving allegation that she has been guilty of misconduct as set forth in

the Joint Petition;

3. She acknowledges that the material facts set forth in the Joint Petition are true; and

4. She consents because she knows that if the matter pending against her is prosecuted, she could not successfully defend against the charges.



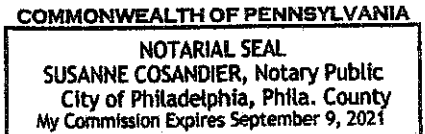
Dawn A. Segal
Respondent

Sworn to and subscribed

Before me this 25th day

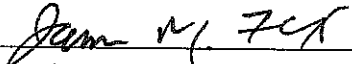
of February, 2019.

Susanne Cosandier
Notary Public



CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: James M. Fox
Signature: 
Name: James M. Fox
Attorney No. (if applicable): 58824