

**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

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In re:

Dawn A. Segal
Municipal Court Judge
First Judicial District
Philadelphia County

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NO. 3 JD 2015

**JUDICIAL CONDUCT BOARD'S BRIEF IN SUPPORT OF
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. FINDINGS OF FACT¹

1. Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania grants to the Judicial Conduct Board the authority to determine whether there is probable cause to file formal charges against a judicial officer in this Court, and thereafter, to prosecute the case in support of such charges in this Court.

2. On January 4, 2010, Judge Segal began her service as Judge of the Municipal Court of Philadelphia, Pennsylvania.

3. On or about September 24, 2014, Municipal Court President Judge Marsha Neifield verbally informed Judge Segal that she was reassigned to limited judicial duties until further notice.

4. As a result of the reassignment, Judge Segal continued to perform limited judicial duties at the Municipal Court through February 2, 2016.

¹ Citations to the record are limited to those facts which are not contained within the Proposed Stipulated Facts, as presented to this Court in the October 9, 2015 Judicial Conduct Board Pre-Trial Memorandum and admitted at trial as joint stipulations of fact.

5. By its February 2, 2016 Order, this Court suspended Judge Segal without pay.

6. During her service as Municipal Court Judge, Judge Segal was at all times relevant hereto, subject to all the duties and responsibilities imposed on her by the Constitution of the Commonwealth of Pennsylvania and the Code of Judicial Conduct.

7. Based on a Confidential Request for Investigation at JCB File No. 2014-580, the Board investigated the instant matter.

8. As a result of its investigation, and pursuant to Article V, §18(a)(7) of the Constitution of the Commonwealth of Pennsylvania, the Board determined that there was probable cause to file formal charges in this Court against Judge Segal.

9. In 2009, Judge Segal and former Municipal Court Judge Joseph C. Waters, Jr., were judicial candidates and became acquainted at various campaign events.

10. Based on her experiences during the 2009 judicial campaign cycle, in 2011, Judge Segal believed that former Judge Waters was politically well-connected.

11. In 2011 and 2012, Judge Segal and former Judge Waters, served as judges of the Municipal Court of Philadelphia.

12. Unknown to former Judge Waters and Judge Segal, the FBI conducted a wiretap of former Judge Waters' telephone communications and intercepted and recorded his conversations with Judge Segal on September 30, 2011 (two phone calls), June 29, 2012, July 1, 2012, July 23, 2012 and July 24, 2012.

13. FBI Special Agents Eric H. Ruona and Maureen M. Poulton interviewed Judge Segal on September 19, 2012 at Starbucks on Germantown Avenue in Philadelphia.

14. On November 26, 2013, FBI Special Agent Ruona contacted Judge Segal by telephone to schedule a meeting to discuss additional questions.

15. On December 10, 2013, FBI Special Agents Ruona and Poulton interviewed Judge Segal in person at the United States Attorney's Office, 615 Chestnut Street, Philadelphia. Also present were Judge Segal's attorney, Brian McMonagle, and Assistant United States Attorneys Richard Barrett and Michelle Morgan.

16. On May 1, 2014, Judge Segal and her then counsel, Brian McMonagle, Esquire, met with Assistant United States Attorneys Richard Barrett and Michelle Morgan and FBI Special Agents Eric Ruona and Chad Speicher at the United States Attorney's Office, 615 Chestnuts Street, Philadelphia , Pennsylvania.

17. During the May 1, 2014 meeting, Judge Segal was interviewed by the federal prosecutors and FBI agents who played intercepted telephone conversations between former Judge Waters and Judge Segal.

18. After listening to the recordings, Attorney McMonagle spoke with Judge Segal privately and subsequently ended the meeting. Judge Segal did not answer any questions pertaining to the intercepted telephone conversations that day. Trial Tr. 58:4-11; 211:6-7.

19. In the afternoon of May 1, 2014, Attorney McMonagle informed AUSA Barrett that he could no longer represent Judge Segal because of a conflict of interest.

20. On May 15, 2014, Judge Segal and her attorneys, Stuart L. Haimowitz, Esquire and Jack Gruenstein, Esquire spoke with Assistant United States Attorneys Richard Barrett and Michelle Morgan and FBI Special Agents Eric Ruona and Chad Speicher, without benefit of a proffer letter or any other legal protection, at the United States Attorney's Office, 615 Chestnuts Street, Philadelphia, Pennsylvania.

21. On May 15, 2014, Judge Segal was interviewed by the federal prosecutors and FBI agents who played intercepted telephone conversations between former Judge Waters and Judge Segal.

22. During the May 15, 2014 meeting, Judge Segal answered the questions posed by the FBI special agents and the AUSAs.

23. On June 3, 2014, Assistant United States Attorneys Richard P. Barrett and Michelle Morgan and FBI Special Agent Eric H. Ruona interviewed Judge Segal, represented by Attorneys Stuart Haimowitz and Jack Gruenstein, at the Nix Post Office and Federal Courthouse prior to her Grand Jury Appearance.

24. On June 3, 2014, Judge Segal testified before a grand jury without any promise of immunity or legal protection.

25. As a result of an investigation, the United States Attorney's Office for the Eastern District of Pennsylvania filed a two count Information against former Judge Waters.

26. On September 24, 2014, former Judge Waters entered a negotiated guilty plea, dated August 7, 2014, in the United States District Court for the Eastern District of Pennsylvania to one count of mail fraud (18 U.S.C. §§ 1341 and 2) and one count of honest services wire fraud (18 U.S.C. §§ 1343, 1346 and 2). *United States v. Waters*, 2:14-cr-00478.

27. Within the negotiated guilty plea agreement of former Judge Waters, which incorporates the two count Information, are excerpts of conversations he initiated with Judge Segal (Judge #1) pertaining to a civil matter (*Houdini Lock & Safe Company v. Donegal Investment Property Management Services*, Case No. SC-11-08-09-4192) and a criminal matter (*Commonwealth v. Khoury*, Docket No. MC-51-CR-0018634-2012).

28. Alerted by news accounts and based on the information gleaned from the *Waters* case, on September 26, 2014, the Board opened a Confidential Request for Investigation against Judge Segal at Judicial Conduct Board File No. 2014-580 pertaining to her *ex parte* communications with former Judge Waters.

29. By means of a September 29, 2014 letter to the Board from her counsel, Stuart L. Haimowitz, Esquire, Judge Segal self-reported the *ex parte* conversations and underlying facts concerning *Houdini v. Donegal* and *Commonwealth v. Khoury*.

30. In the September 29, 2014 letter to the Board, Judge Segal self-reported that former Judge Waters also initiated an *ex parte* communication with her regarding a third case, *City of Philadelphia v. Rexach Ian C.*, Case No. CE-12-03-73-0123.

31. In the September 29, 2014 letter to the Board, Judge Segal stated that the reason that she did not timely report the *ex parte* communications with former Judge Waters was because of a request from "federal investigators to maintain their confidentiality."

32. On March 11, 2015, the Board filed a Complaint against Judge Segal in the Court of Judicial Discipline at 3 JD 2015.

33. On March 11, 2015, the Board also filed a Petition for Interim Suspension against Judge Segal in the CJD.

34. On March 31, 2015, Judge Segal filed her Answer.

35. On June 16, 2015, the Board received six FBI FD-302 interview reports of Judge Segal from FBI Special Agent-in-Charge Edward J. Hanko.

36. On June 16, 2015, the Board received a diskette containing the recordings of four wiretapped telephone conversations between former Judge Waters and Judge Segal which occurred on September 30, 2011, June 23, 2012 and June 24, 2012.

37. On January 26, 2016, the Board received two additional recordings of intercepted telephone conversations from FBI Special Agent Eric H Ruona. The June 29, 2012 recording is limited to a voicemail message from Judge Segal to Judge Waters. The July 1, 2012 intercepted recording is of a telephone call from Judge Segal to former Judge Waters pertaining to the *Rexach* matter.

Houdini v. Donegal

38. A hearing on the *Houdini v. Donegal* matter was scheduled before Judge Segal on September 30, 2011.

39. On September 30, 2011, former Judge Waters called Judge Segal on the telephone about the *Houdini* hearing that was pending before her.

40. The following quoted language was transcribed by Board staff from the diskette provided by the FBI and is to the best of the Board's ability an exact rendering of a pertinent excerpt from the September 30, 2011 wiretapped conversation between former Judge Waters and Judge Segal:

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. 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, the defendant.

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

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

Judge Segal: Oh, okay. Okay.

Former Judge Waters: Alright?

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

See Board Exhibit 8a.

41. On September 30, 2011, Judge Segal was not acquainted with Samuel Kuttab.

42. On or about September 30, 2011, counsel for Donegal and Kuttab entered a motion for a continuance, stating that he needed more time to prepare for the trial. Attorney for Plaintiff Houdini opposed the motion.

43. On September 30, 2011, Judge Segal presided over the *Houdini* hearing, granted the defense continuance and ordered that the case proceed to trial without any further defense continuances.

44. On September 30, 2011, Judge Segal called former Judge Waters and informed him that she continued the *Houdini* matter.

45. The following quoted language was transcribed by Board staff from the diskette provided by the FBI and is, to the best of the Board's ability, an exact rendering of the second September 30, 2011 wiretapped conversation between former Judge Waters and Judge Segal:

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. Well, can we meet for a drink or something?

Former Judge Waters: I'm on my way to the American Pub right now. [chuckles]

Judge Segal: [laughs] I have to go pick up my daughter, but I'd like that in the future. I miss you.

Former Judge Waters: Absolutely, babe. You tell me where and when.

Judge Segal: Okay. Alright. I'll talk to you later then. Alright, take care.

Former Judge Waters: Alright. Bye-bye.

Judge Segal: Bye-bye.

See Board Exhibit 8b.

46. Subsequently, the *Houdini* trial was scheduled for November 16, 2011 before Judge Joseph J. O'Neill.

47. The first September 30, 2011 recorded telephone conversation, quoted at Paragraph No. 40 above, demonstrates that Judge Segal participated in an *ex parte* communication with former Judge Waters about the *Houdini* hearing, a matter that was pending before her.

48. The second September 30, 2011 recorded telephone conversation, quoted at Paragraph No. 45 above, demonstrates that Judge Segal participated in an *ex parte* communication with former Judge Waters about the *Houdini* hearing, a matter that she ruled on earlier that day.

49. The September 30, 2011 recorded telephone conversations, quoted at Paragraph Nos. 40 & 45 above, demonstrate that Judge Segal entertained an *ex parte* request to provide favorable treatment to the litigant, Donegal, and to Kuttab.

50. Judge Segal's grant of the defense continuance at the September 30, 2011 *Houdini* hearing favored Donegal and Kuttab, for whom former Judge Waters requested special consideration during the first September 30, 2011 *ex parte* telephone conversation.

51. The purpose of the first September 30, 2011 telephone call from former Judge Waters to Judge Segal was to request special consideration or favorable treatment for Kuttab and Donegal.

52. On September 30, 2011, Judge Segal did not tell former Judge Waters to stop the *ex parte* request for special consideration or inform him that she would not provide preferential treatment to Donegal and Kuttab.

53. At the September 30, 2011 *Houdini* hearing, Judge Segal did not disclose to the litigants and their attorneys that she engaged in *ex parte* communication with former Judge Waters prior to the proceeding.

54. On September 30, 2011, Judge Segal did not recuse herself from the *Houdini* hearing, despite her *ex parte* telephone communication with former Judge Waters prior to the proceeding.

55. On September 30, 2012, Judge Segal called former Judge Waters by telephone and advised him, "I continued the matter," "I did the best I could," and "All for you. Anything" in the *Houdini* case. See Bd. Ex. 8b.

56. Judge Segal's duty to report the *ex parte* communication in the *Houdini* matter arose on September 30, 2011 when former Judge Waters requested special consideration.

57. Judge Segal believed she was constrained from reporting former Judge Waters' *ex parte* communications in the *Houdini* matter to the Board because of a request from "federal investigators to maintain their confidentiality." Answer, ¶ 13.

58. FBI Special Agents Eric H. Ruona and Maureen Poulton first interviewed Judge Segal regarding the *Houdini* matter on September 19, 2012, nearly one year after the September 30, 2011 *ex parte* communications. Tr. N.T. 27:10-28:13.

59. Judge Segal did not timely report her September 30, 2011 *ex parte* telephone communications with former Judge Waters regarding the *Houdini* matter to the Judicial Conduct Board.

60. Judge Segal was friendly with former Judge Waters. Tr. N.T. 41:5-7.

61. During the December 10, 2013 interview with federal prosecutors, Judge Segal did not specifically recollect the *Houdini* case, but did state that former Judge Waters called her on two or three occasions about cases. *Id.* at 40:13-41:2.

62. During the December 10, 2013 interview with federal prosecutors, Judge Segal said that none of the requests from former Judge Waters involved substantive matters but instead were about continuances and the like. *Id.* at 41:14-18; 42:12-17; 43:9-14; 44:8-15.

63. During the December 10, 2013 interview with federal prosecutors, Judge Segal said that the calls from former Judge Waters did not change the way she would have handled a case, that she was able to put the request out of her mind and that she was relieved that his *ex parte* requests were for things she would have normally done. *Id.* at 43:15-23; 44:16-21.

64. Judge Segal, originally from Connecticut, considers herself to be an outsider from the Democratic Party and the political process in Philadelphia. *Id.* 30:19-31:5; 48:11-21.

65. Judge Segal was not endorsed by the Democratic Party when she ran for judicial office in 2009, but she had a good ballot position. *Id.* at 31:5-8.

66. FBI Special Agent Eric H. Ruona testified at trial that during the May 15, 2014 meeting, Judge Segal made the following statements while discussing the *Houdini* matter:

- a. She admitted that her two September 30, 2011 phone calls with former Judge Waters about the *Houdini* case were inappropriate. *Id.* at 61:7-17.
- b. She claimed to be uncomfortable about the September 30, 2011 calls about *Houdini*. *Id.* 61:21-62:2; *See also Id.* at 47:9-12.
- c. She offered no explanation for why she called former Judge Waters after granting the continuance in *Houdini*. *Id.* at 62:7-10.
- d. She did not say "no" to former Judge Waters' request for favorable treatment because she wanted to give the impression that she was doing what he asked her to do. She did not want to alienate him. *Id.* at 62:11-63:5.
- e. She thought it was okay to entertain former Judge Waters' request for favorable treatment because it was for a ruling she would have made anyway and in accord with how she handled continuances. *Id.* at 63:3-6; 63:10-14.
- f. She believed that former Judge Waters was trying to influence her when he called her about the *Houdini* case. *Id.* at 63:19-64:9.
- g. She wanted former Judge Waters to believe that she went along with his request. *Id.* at 64:12-15.
- h. She and former Judge Waters were friends and she trusted him. *Id.* at 63:7-9; 64:25-65:6-7.

67. FBI Special Agent Eric H. Ruona testified at trial that during the June 3, 2014 interview, Judge Segal made the following statements while discussing the *Houdini* matter:

- a. She recognized that the phone calls from former Judge Waters were improper. *Id.* at 77:16-25.

b. She described feeling as if she was "between a rock and a hard place," meaning that she wanted to give former Judge Waters the impression that she was doing what he asked her to do. *Id.* at 77:25-78:16.

c. She wanted to give Judge Waters the impression that she was doing a favor for former him. *Id.* at 78:17-21.

d. She was worried about her retention election and wanted former Judge Waters to assist and support her. She wanted to avoid making him her enemy. *Id.* at 78:22-79:2.

e. She knew that former Judge Waters was influential in the Democratic Party and she tried to keep him happy. *Id.* at 79:2-6.

f. She granted the continuance as she typically would on a first request, but marked it "must be tried" in order to "keep my dignity." *Id.* at 79:21-80:13.

g. She stated, "The fact that he called me influenced me absolutely." *Id.* at 80:14-20.

68. On September 30, 2011, Judge Segal read an article published in the Philadelphia Inquirer prior to her *ex parte* conversations with former Judge Waters that same day. Tr. N.T. 183:22-184:11.

69. The September 30, 2011 article was about the Democratic Party threatening judges who ran for retention and failed to pay \$10,000 to the Party. *Id.* at 184:13-19.

70. In 2009, Judge Segal ran for the position of Municipal Court Judge without the endorsement of the Democratic Party. *Id.* at 184:23-25.

71. During and after the 2009 primary election, Judge Segal encountered threats from members of the Democratic party including a person who was quoted

in the September 30, 2011 newspaper article who again threatened the judges running for retention. *Id.* at 185:5-186:21.

72. Judge Segal admitted that the September 30, 2011 news article impacted her *ex parte* conversation with former Judge Waters that same day because she did "love being a judge," and did not want to be "defeated by the party." *Id.* at 186:1-14.

73. Judge Segal considered former Judge Waters to be a friend and knew that he would be also be running for retention in 2015. *Id.* at 186:16-25.

74. Judge Segal said she was "very uncomfortable" when she received the *ex parte* call from former Judge Waters about the *Houdini* case and said "no one had ever called me" since she became a judge. *Id.* at 187:3-9.

75. Judge Segal did not reject former Judge Waters request for special consideration because she "was just so upset about that article." *Id.* at 187:14-18.

76. At the March 28, 2016 trial, Judge Segal made the following statement about why she placed the *ex parte* follow-up call to former Judge Waters and reported her ruling in the *Houdini* matter to him:

I wanted him to think that he had - - that his call had influenced me, but it hadn't influenced me. I think I just wanted him to think that I - - that he had gotten through to me when he hadn't.

Id. at 190:15-191:1.

77. At trial, Judge Segal stated that she did not report former Judge Waters' *ex parte* communications in the *Houdini* matter between September 30, 2011 and June, 2012 "because I was a new judge. I thought it was a one-time thing." *Id.* at 191:2-21.

78. At trial, Judge Segal stated that she practiced as an attorney for twenty-five years before ascending to the bench and was aware of the prohibition against *ex parte* communications. *Id.* at 238:23-239:6.

79. Judge Segal admitted that she placed follow-up calls to former Judge Waters to tell him how she ruled in *Houdini*, *Rexach* and *Khoury*. *Id.* at 239:15-24.

City of Philadelphia v. Rexach

80. By means of a September 29, 2014 letter from her counsel, Judge Segal self-reported to the Board that former Judge Waters contacted her by telephone and in-person about *City of Philadelphia v. Rexach*, a case pending before her which was not part of the Guilty Plea Agreement of former Judge Waters. See Bd. Ex. 16.

81. Ian C. Rexach is the son of Court of Common Pleas Judge Angeles Roca who is a friend of former Judge Waters.

82. At the time that former Judge Waters contacted Judge Segal on September 29, 2012 and during her deliberations in the *Rexach* matter, Judge Segal did not have a personal relationship with Judge Roca nor did she know that Ian C. Rexach was Judge Roca's son.

83. The procedural history in *Rexach* included an Order dated May 15, 2012 in which President Judge Neifield entered a default judgment for the City of Philadelphia and against Rexach in the amount of \$5,000 plus costs for failure to pay a 2009 Business Privilege Tax.

84. On June 12, 2012, Rexach filed a Petition to Open Judgment.

85. On June 12, 2012, Judge Segal denied Rexach's Petition to Open for failure to allege a meritorious defense, a ruling consistent with Pennsylvania Rule of

Civil Procedure No. 237.3.

86. On June 29, 2012, Rexach filed a petition to reconsider the previously denied Petition to Open.

87. The *Rexach* petition for reconsideration alleged a meritorious defense.

88. On June 29, 2012, Judge Segal returned a telephone call to former Judge Waters and left a voice mail message. See Board Exhibit 8c.

89. The following quoted language was transcribed by Board staff from the recording provided by the FBI and is, to the best of the Board's ability, an exact rendering of the June 29, 2012 intercepted voicemail message from Judge Segal to former Judge Waters:

Judge Segal:	Hi Joe, it's Dawn Segal returning your call. Um, give me a call when you get a chance. Hopefully, I'll get you, I had to go to . . . oh, this might be you, let me see, let me see . . . [55 seconds of voicemail commands]
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See Bd. Ex. 8c.

90. On June 29, 2012, former Judge Waters again called Judge Segal by telephone to discuss the *Rexach* case that was pending before her.

91. As disclosed in Judge Segal's September 29, 2015 letter to Board Chief Counsel, during their June 29, 2012 telephone conversation, former Judge Waters informed Judge Segal that "a friend" filed a petition to reconsider her June 12, 2012 ruling on the Petition to Open in the *Rexach* matter. See Board Exhibit 16.

92. On or about June 29, 2012, former Judge Waters also went to Judge Segal's robing room and initiated an in-person conversation with her about the *Rexach* matter that was pending before her.

93. After former Judge Waters spoke with her about the *Rexach* matter, on June 29, 2012, Judge Segal reviewed the petition for reconsideration, which alleged a meritorious defense, and issued a Rule to Show Cause.

94. Two days after issuing a Rule to Show Cause in the *Rexach* case, On July 1, 2012, Judge Segal called former Judge Waters. See Bd. Ex. 8d.

95. The following quoted language was transcribed by Board staff from the recording provided by the FBI and is, to the best of the Board's ability, an exact rendering of the July 1, 2012 intercepted telephone conversation between Judge Segal and former Judge Waters:

Former Judge Waters: [23 seconds of phone ringing] 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.

See Bd. Ex. 8d.

96. By her June 29, 2012 telephone and in-person conversations with former Judge Waters, Judge Segal engaged in two prohibited *ex parte* communications about the *Rexach* petition for reconsideration, a matter that was pending before her.

97. By her June 29, 2012 *ex parte* communications with former Judge Waters regarding the *Rexach* matter, Judge Segal entertained requests to provide favorable treatment to the litigant, Rexach, who is politically connected with or a friend of former Judge Waters.

98. By issuing the Rule to Show Cause, Judge Segal favored the petitioner in *Rexach* for whom former Judge Waters requested special consideration during the June 29, 2012 telephone and in person *ex parte* communications.

99. The purpose of Judge Waters' June 29, 2012 telephone and in-person conversations with Judge Segal was to request special consideration or favorable treatment for Ian C. Rexach.

100. On June 29, 2012, Judge Segal did not tell former Judge Waters to stop the *ex parte* requests for special consideration or inform him that she would not provide preferential treatment to his friend, Rexach.

101. On June 29, 2012, Judge Segal did not disclose to the litigants and attorneys who represented the parties in the *Rexach* matter that she engaged in *ex parte* telephone and in-person communications with former Judge Waters prior to her review and decision regarding the petition for reconsideration.

102. On June 29, 2012, Judge Segal did not recuse herself from reviewing the petition for reconsideration and issuing the Rule to Show Cause in the *Rexach* matter, despite her *ex parte* telephone and in-person communications with former Judge Waters.

103. On July 1, 2012, Judge Segal called former Judge Waters by telephone and advised him that she "took care of it" and "tell her it's done" in the *Rexach* case.
Bd. Ex. 8d.

104. Judge Segal's duty to report the *ex parte* communication in the *Rexach* matter arose on June 29, 2012 when former Judge Waters requested special consideration.

105. Judge Segal believed she was constrained from reporting former Judge Waters' *ex parte* communications in the *Rexach* matter to the Board because of a request from "federal investigators to maintain their confidentiality." Answer, ¶ 13.

106. The FBI first interviewed Judge Segal about the *Rexach* matter on December 10, 2013, nearly one and one half years after the June 29, 2012 *ex parte* communication.

107. Judge Segal did not timely report her June 29, 2012 *ex parte* telephone and in person communications with former Judge Waters about the *Rexach* matter to the Judicial Conduct Board.

108. FBI Special Agent Ruona testified at trial that during the June 3, 2014 interview, Judge Segal made the following statements while discussing the *Rexach* matter:

a. Although she had no independent memory of it, "she thought that maybe Waters had met her in person in a robing room and told her that Rexach was Judge Roca's son." Tr. N.T. 81:17-82:15.

b. She believed former Judge Waters request for special consideration in *Rexach* was part of a larger situation and that Waters was influential in the Democratic Party. *Id.* at 83:17-84:1.

c. Because former Judge Waters was "their [Democratic Party] guy," she wanted to act as if she were doing a favor for him. *Id.* at 84:1-2.

109. At the March 28, 2016 trial, Judge Segal described her reactions to the June 29, 2012, *ex parte* phone call from former Judge Waters to request special consideration in Rexach as follows:

I thought now he's calling me a second time. Now I have a problem. This is not just an isolated incident. Now I've got to figure out what to do.

Id. at 195:15-17.

110. At trial, Judge Segal said she decided that although the *ex parte* call from former Judge Waters made her "feel uncomfortable," she would stay in the case and "make the right decision." 195:20-196:6.

111. At trial, Judge Segal said that her follow-up call to Waters about the grant of the *Rexach* Petition for Reconsideration "was stupid." She did not know why she placed the call but said:

I think because I'm buying myself time to figure out what to do with this man. I have a problem now.

Id. at 197:2- 9.

112. At trial, Judge Segal said that she did not know why she did not "figure out" the right approach to dealing with the *ex parte* calls from former Judge Waters and explained:

The first time [*Houdini*] I understand, because I was so scared, because I had read the article about the threats. The second time I just thought I don't know what to do. I'm just going to do the right thing and hope that this goes away.

Id. at 197:12-21.

113. At trial, when asked about her July 1, 2012 statement to former Judge Waters "I got it. All right. It was on my queue, so I did it. So tell her it's done," Judge Segal admitted that it seemed from the recording that she was trying to give

Waters the impression that she was doing what he asked. She said, "I don't' know why I called him back. It was certainly wrong of me to call him back." *Id.* at 243:16-244:13.

Commonwealth v. Khoury

114. On July 23, 2012, former Judge Waters again contacted Judge Segal by telephone regarding *Commonwealth v. Khoury*, a case pending before her. See Board Exhibit 8e.

115. During the July 23, 2012 telephone conversation, former Judge Waters informed Judge Segal that she was scheduled to preside over a case involving a friend of his and named both Rich Khoury and Attorney Skip Fuschino. *Id.*

116. The following quoted language was transcribed by Board staff from the diskette provided by the FBI and is, to the best of the Board's ability, an exact rendering of the July 23, 2012 intercepted telephone conversation between former Judge Waters and Judge Segal:

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 . . . 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.

Former Judge Waters: Thank you much.

Judge Segal: Alright. Take care.

Former Judge Waters: Okay. Bye-bye.

Judge Segal: Bye-bye.

See Bd. Ex. 8e.

117. In *Khoury*, the Commonwealth charged Khoury with Firearms Not to Be Carried Without a License, 18 Pa.C.S.A. § 6106(a)(1), and Carry Firearms in Public in Philadelphia, 18 Pa.C.S.A. § 6108.

118. On July 24, 2012, the day after her *ex parte* telephone communication with former Judge Waters, Judge Segal presided over the Preliminary Hearing in *Khoury*.

119. During the *Khoury* Preliminary Hearing, Judge Segal heard extensive argument about the elements and grading of the crime, Firearms Not to Be Carried Without a License, but no case law was presented to her on this issue.

120. Following argument in the *Khoury* matter, Judge Segal determined that the crime should be graded as a misdemeanor, not a felony as initially charged, and remanded the case for trial.

121. On July 24, 2012, Judge Segal called former Judge Waters and advised him that she remanded the *Khoury* matter.

122. The following quoted language was transcribed by Board staff from the diskette provided by the FBI and is, to the best of the Board's ability, an exact

rendering of a pertinent excerpt from the July 24, 2012 intercepted conversation between Judge Segal and former Judge Waters:

Judge Segal: Joe?

Former Judge Waters: Hey, Dawn. How are you doing?

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

Former Judge Waters: Okay. What's going on?

[Language not related to charged conduct removed]

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

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

Judge Segal: Okay, you take care.

Former Judge Waters: Alright, baby. Bye-bye.

Judge Segal: Bye-bye.

See Bd. Ex. 8f.

123. By her July 23 and 24, 2012 telephone conversations with former Judge Waters, quoted at Paragraph Nos. 116 and 122, Judge Segal engaged in *ex parte* communication about the *Khoury* case, a matter pending before her.

124. By her July 23, 2012 telephone conversation with former Judge Waters, quoted at Paragraph No.116, Judge Segal entertained an *ex parte* request to provide favorable treatment to a litigant, Khoury, who is politically connected with or a friend of former Judge Waters.

125. Judge Segal's ruling in *Khoury* favored the defendant, Khoury, for whom former Judge Waters requested special consideration during the July 23, 2012 *ex parte* telephone communication.

126. The purpose of the July 23, 2012 *ex parte* telephone call from former Judge Waters to Judge Segal was to request special consideration or favorable treatment for Khoury in the firearms possession case.

127. On July 23, 2012, Judge Segal did not tell former Judge Waters to stop the *ex parte* request for special consideration or inform him that she would not provide preferential treatment to Khoury.

128. At the July 24, 2012 Preliminary Hearing in *Khoury*, Judge Segal did not disclose to the litigants and their attorneys that she engaged in *ex parte* communication with former Judge Waters prior to the proceeding.

129. On July 24, 2012, Judge Segal did not recuse herself from the Preliminary Hearing in *Khoury*, despite her *ex parte* telephone communication with former Judge Waters prior to the proceeding.

130. Following the July 24, 2012 Preliminary Hearing in *Khoury*, Judge Segal called former Judge Waters by telephone to inform him that she remanded the *Khoury* case.

131. Judge Segal's duty to report the *ex parte* communication in the *Khoury* matter arose on July 23, 2012 when former Judge Waters requested special consideration.

132. Judge Segal believed she was constrained from reporting former Judge Waters' *ex parte* communications in the *Khoury* matter because of a request from "federal investigators to maintain their confidentiality." See Answer, ¶ 13.

133. The FBI first interviewed Judge Segal regarding her *ex parte* communications with former Judge Waters about the *Khoury* matter on September 19, 2012, nearly two months after her July 23 and 24, 2012 conversations with him.

134. Judge Segal did not timely report her July 23, 2012 *ex parte* telephone communication with former Judge Waters regarding the *Khoury* matter to the Judicial Conduct Board.

135. FBI Special Agent Ruona testified at trial that during the May 15, 2014 meeting, Judge Segal made the following statements while discussing the *Khoury* matter:

- a. She understood that when former Judge Waters asked her “to take a good hard look it,” he was trying to influence her. Tr. N.T. 66:7-20.
- b. She said that the call from former Judge Waters influenced her but that that it did not affect her ruling in *Khoury*. *Id.* at 67:8-16.
- c. She recognized that she should have recused when she received the July 23, 2012 call from former Judge Waters. *Id.* at 67:3-7.

136. FBI Special Agent Ruona testified at trial that Judge Segal made the following statements at the May 15, 2014 interview after listening to the intercepted recorded calls:

- a. When asked what a reasonable person might think about her tone of voice during the telephone calls with former Judge Waters, she admitted that her tone of voice did not indicate that she was uncomfortable. *Id.* at 73:10-15.
- b. She agreed that her tone of voice during the telephone calls with former Judge Waters sounded as though she was agreeing to fix cases. *Id.* at 73:17-21.
- c. She stated that no other judges ever called her to request special consideration. *Id.* at 73:23-76:12

137. FBI Special Agent Ruona testified at trial that during the June 3, 2014 interview, Judge Segal made the following statements while discussing the *Khoury* matter:

- a. She had no explanation for her statements to former Judge Waters during the July 24, 2012 follow-up call about the *Khoury* ruling. *Id.* at 85:15-86:1.
- b. She knew that former Judge Waters' request in *Khoury* was to make a substantive decision and that she should have recused herself from the case. *Id.* at 86:3-9.
- c. She stated, "Of course Waters' call influenced her." *Id.* at 86:22-87:2.
- d. She was more open to the argument of Attorney Fuschino because of his relationship with former Judge Waters and because of the July 23, 2014 call from Waters. *Id.* at 87:19-25.
- e. She admitted that her follow-up call to former Judge Waters on July 24, 2014 about *Khoury* sounded like she was reporting to him that she had done his bidding. *Id.* at 88:1-7.
- f. She was receptive to the calls from former Judge Water and wanted to give him the impression that she was helping him out. *Id.* at 88:19-89:1.
- g. She surmised that when he asked her to "take a good hard look at it," former Judge Waters wanted her to give the *Khoury* case more scrutiny than she typically would. *Id.* at 89:2-10.

138. FBI Special Agent Ruona testified at trial that during the June 3, 2014 interview, Judge Segal acknowledged that the intercepted telephone calls from former Judge Waters sounded like he was asking her to fix cases and "in retrospect, it sounds horrible." *Id.* at 89:11-19.

139. FBI Special Agent Ruona testified at trial that during the June 3, 2014 interview, Judge Segal admitted that her tone of voice during the intercepted recorded telephone calls with former Judge Waters sounded as though she was happy to do what he had asked of her. *Id.* at 84:3-85:1.

140. At the March 28, 2016 trial, Judge Segal stated that when former Judge Waters called her on July 23, 2012 to request favorable treatment in the *Khoury* case, three weeks after the *Rexach ex parte* communications, she knew she should stop but did not. She described her thoughts at the time as:

And I thought, oh, my God, now I'm done. I've got to stop this. This is ridiculous. He's playing me. I've got to stop it. I'm just going to end it. I don't end it then.

Id. at 198:7-12.

141. At trial, Judge Segal admitted that she stayed in the case and thought, "I'm just going to do the right thing and end this, which I do. But I hear the case." *Id.* at 198:14-17.

142. At deposition, Judge Segal said that when she received the July 23, 2012 call from former Judge Waters about *Khoury*, she recognized that she had to put a stop to the *ex parte* requests for special consideration. Segal Dep. 30:13-18 (Dec. 30, 2014). See Bd. Ex. 12.

143. At trial, when asked why she did not put a stop to the *ex parte* communications in *Khoury*, Judge Segal said "I think because I froze. And I - - I just thought, again, I'm going to make the decision that's the correct legal decision, or so I thought, and put an end to it." Tr. N.T. 247:14-248:23.

144. Judge Segal did not consider contacting former Judge Waters after the *Khoury ex parte* communications but before he reached out to her again. She

stated during cross-examination at trial, "I kept hoping he would stop, that it would go away." *Id.* at 249:20-24.

145. At trial, Judge Segal said the calls from Judge Segal influenced her, but did not influence her decisions because she was able to put the requests for special consideration out of her mind and "decide exactly how I would in any other case. And that's what I did." *Id.* at 254:13-255:19.

146. When asked on cross-exam if she understood that putting a case out of her mind after an *ex parte* request for special consideration is contrary to the canons, Judge Segal responded, "I reported my - - I was wrong. I reported the fact that I did not report, that I did not recuse, that I didn't hang up." *Id.* at 255:20-256:2.

147. At trial, Judge Segal agreed that engaging in *ex parte* communications about a proceeding, be it a continuance or a decision on the merits, was wrong. *Id.* at 260:141-24.

II. DISCUSSION

COUNT 1

Judge Segal has violated Canon 2B of the Old Code of Judicial Conduct.

Canon 2B provides in part:

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

The Board proved by clear and convincing evidence that Judge Segal knowingly engaged in *ex parte* communications seven times with former Judge Waters about three cases pending before her, and thereby violated Canon 2B.

Former Judge Joseph C. Waters initiated the *ex parte* communications with Judge Segal to request special consideration in *Houdini Lock & Safe Company v. Donegal Investment Property Management Services*, Case No. SC-11-08-09-4192; *City of Philadelphia v. Rexach Ian C.*, Case No. CE-12-03-73-0123; and *Commonwealth v. Khoury*, Docket No. MC-51-CR-0018634-2012. Judge Segal actively listened to those requests, asking questions to determine the parties who were to be the recipients of preferential treatment.

Judge Segal recognized that the *ex parte* requests for special consideration in *Houdini*, *Rexach* and *Khoury* were improper and that "sitting judges don't call sitting judges about a case that's before them." Tr. N.T. 217:9-11 (Jan. 28, 2016). Despite knowing it was wrong, Judge Segal decided to preside over each of the cases, even though the calls from former Judge Waters created a conflict of interest necessitating her recusal. Judge Segal admitted that she failed to tell former Judge Waters to stop the *ex parte* communications in *Houdini*, *Rexach* and *Khoury* and failed to tell him that she would not consider the *ex parte* communications when deciding each of the three cases.

Judge Segal had motive to stay in the *Houdini* case. She admitted during FBI interviews, during deposition and at trial that she was upset on September 30, 2011 when former Judge Waters called her to request special consideration in the *Houdini* matter because of a newspaper article published that same day in the Philadelphia Inquirer. See Board Exhibit 17. Bob Warner, *Campaigning Philadelphia judges say Democrats sought \$10,000 donations*, (2011), <http://articles.philly.com/2011-09-30/news>. Judge Segal explained that she was repeatedly threatened in her first election by the same person who was quoted in the September 30, 2011 news

article. She did not know what to do about the potential future threats against her in the 2015 retention campaign, so she relied on the counsel of former Judge Waters. Bd. Ex. 8a.

Judge Segal and former Judge Waters campaigned together in the 2009 election cycle. She was not politically connected and described herself as an outsider. She knew that former Judge Waters was well connected in the Democratic Party and considered him her friend and ally. Judge Segal trusted former Judge Waters and wanted his support against the threats of the Democratic Party in the 2015 retention election. She admitted that she wanted to keep him happy. Judge Segal was hesitant to tell former Judge Waters to stop the *ex parte* communications because she was shaken by the political threats. These background facts and circumstances contributed to Judge Segal's poor choices when faced with the *ex parte* request for special consideration in *Houdini*. Her receptive demeanor, and her efforts to give the impression that she did what he asked her to do in *Houdini*, led to the additional *ex parte* requests for special consideration from former Judge Waters in *Rexach* and *Khoury*.

Following the proceedings in *Houdini*, *Rexach* and *Khoury*, Judge Segal initiated *ex parte* telephone calls to former Judge Waters to advise him of her rulings. Judge Segal wanted to give former Judge Waters the impression that she did what he asked her to do in each of the three cases. Her rulings favored the litigants for whom he requested special consideration. At trial and at deposition, Judge Segal stated that her legal decisions in the *Houdini*, *Rexach* and *Khoury* cases were the same decisions she would have made even if former Judge Waters had not asked for special consideration in the *ex parte* communications. But, Judge Segal

admitted during FBI interviews and at trial that she calls herself from former Judge Waters did influence her.

By her failure to put a stop to the *ex parte* communications, her failure to recuse in the *Houdini*, *Rexach* and *Khoury* matters, and her intentional follow-up calls to former Judge Waters about her rulings which appeared to favor the litigants from whom special consideration had been requested, Judge Segal conveyed the following impressions to former Judge Waters and others, including Kuttub and Donegal, Rexach, and Khoury:

1. She was receptive to requests for special consideration; and
2. Former Judge Waters was in a special position to influence her.

Additionally, based on her failure to put a stop to those same *ex parte* communications, Judge Segal did knowingly permit former Judge Waters to convey to others, including Kuttub and Donegal, Rexach and Khoury, that former Judge Waters was in a special position to influence her. In closing arguments, counsel for Judge Segal conceded that her conduct violated Canon 2 B. N.T. 263:25-264:2.

Therefore, by her conduct of intentionally participating in the *ex parte* communications and failing to recuse from the proceedings in *Houdini*, *Rexach* and *Khoury*, Judge Segal violated Canon 2B.²

² The same clear and convincing evidence that proves a violation of Canon 2B also forms the basis for a violation of Old Canon 2A. The Title of Canon 2 states, "Judges Should Avoid Impropriety and the Appearance of Impropriety in All Their Activities." Canon 2A provides in part: "Judges should . . . conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Judge Segal's conduct of engaging in *ex parte* communications pertaining to requests for special consideration, and remaining as presiding judge in the *Houdini*, *Rexach* and *Khoury* cases, gives the appearance of impropriety and undermines public confidence in the integrity and impartiality of the judiciary. See *In re Sullivan*, 5 JD 14 Slip Opinion at 17-18 (Pa.Ct.Jud.Disc. 2016); *In re Larsen*, 616 A.2d 529, 562 (Pa. 1992) (Larsen I); *In re Trkula*, 699 A.2d 3, 10 (Pa.Ct.Jud.Disc. 1997). This Court has the authority and discretion to hold that a judge's misconduct, if proved by clear and convincing evidence, violates a Canon, Rule or provision

COUNT 2

Judge Segal has violated Canon 3A(4) of the Old Code of Judicial Conduct.

Canon 3A(4) provides in part:

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

The Board proved by clear and convincing evidence that Judge Segal engaged in *ex parte* communications on seven occasions with former Judge Waters. The evidence includes deposition testimony, trial testimony of FBI Special Agent Ruona, trial testimony of Judge Segal, the stipulated facts and the six recorded calls of intercepted communications between Judge Segal and former Judge Waters. Former Judge Waters initiated *ex parte* telephone calls to Judge Segal to request special consideration on September 30, 2011 in *Houdini v. Donegal*, on June 29, 2012 in *City of Philadelphia v. Rexach*, and on July 23, 2012 in *Commonwealth v. Khoury*. Former Judge Waters also visited Judge Segal in her robing room prior to her review of the *Rexach* Petition for Reconsideration to again make an *ex parte* request for special consideration.

Soon after granting a continuance in *Houdini*, issuing a Rule to Show Cause in *Rexach*, and remanding the case in *Khoury*, Judge Segal followed up with return calls to former Judge Waters to report the judicial action she took in each matter. Because all of those cases were still pending proceedings, the follow-up calls were also *ex parte* communications. Judge Segal was not authorized by law to engage in any of the *ex parte* communications with former Judge Waters.

of the Pennsylvania Constitution, even if the Board does not charge that particular violation within its Complaint. See *In re Jaffee*, 839 A.2d 487 (Pa.Ct.Jud.Disc. 2003) (citing *Matter of Glancy*, 542 A.2d 1350 (1988)). Because the *ex parte* requests at issue gave the appearance of implicating the judicial decision making process in *Houdini*, *Rexach* and *Khoury*, a violation of Canon 2A is sustainable under pre-*Carney* precedent of this Court and the Pennsylvania Supreme Court. *In re Carney*, 79 A.3d 490 (Pa. 2013).

In his closing argument, counsel for Judge Segal asked this court to reject Count 2 on the basis that Judge Segal “did not consider those requests in her decision.” Trial N.T. 264:11-14. This Court has strictly interpreted prohibitions against *ex parte* communications for special consideration. See *In re Sullivan*, 5 JD 14, Slip Opinion (Pa.Ct.Jud.Disc. 2016). The prohibition against *ex parte* communications in Canon 3A(4) is not limited to the effect of the *ex parte* communications on the recipient judge’s actual decision in the case. *Ex parte* communications are not somehow mitigated by whether or not the recipient judge would have made the same decision despite the *ex parte* request for special consideration.

“Consider” is defined as “to think about carefully” and “to think of especially with regard to taking some action.” www.merriam-webster.com/dictionary (2016). Judge Segal did not deny that she thought about former Judge Waters’ *ex parte* requests for special consideration. The evidence presented clearly demonstrates that Judge Segal actively listened to former Judge Waters’ *ex parte* requests for special consideration. She asked questions to clarify the parties for whom former Judge Waters sought favorable treatment. Judge Segal knew that it was wrong to entertain the *ex parte* requests but she failed to take appropriate action.

Judge Segal claims that she put the *ex parte* requests for special consideration out of her mind while deciding each of the three cases. Nevertheless, she admitted that the *ex parte* telephone calls from former Judge Waters did influence her. Judge Segal wanted to make him think that she did provide the requested preferential treatment for his friends. To that end, Judge Segal promptly called former Judge Waters to report on the status of each case after making her

rulings. Instead of rejecting the calls from former Judge Waters, she thought carefully about his *ex parte* requests for special consideration. The totality of the circumstances demonstrates that Judge Segal did indeed consider the *ex parte* communications from former Judge Waters in violation of Canon 3A(4).

COUNT 3

Judge Segal has violated Canon 3B(3) of the Old Code of Judicial Conduct.

Canon 3B(3) provides:

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

The Board has proved by clear and convincing evidence that Judge Segal failed to timely report the *ex parte* communications between herself and former Judge Waters to the Judicial Conduct Board. Judge Segal's duty to report the *ex parte* communications in the *Houdini* matter arose on September 30, 2011. In *Rexach*, the duty to report arose on June 29, 2012. Finally, her duty to report the prohibited communications in *Khoury* arose on July 23, 2012. As set forth above and within the stipulated facts admitted into evidence at trial, Judge Segal admits that her duty to report the misconduct to the Board arose on those specific dates.

Although Judge Segal argues that she believed she was constrained from reporting former Judge Waters' *ex parte* communications because of a request for confidentiality, she admitted at trial that the request came from Assistant United States Attorney Richard A. Barrett. Judge Segal first met with AUSA Barrett on December 10, 2013, greater than two years after the *ex parte* communications in *Houdini* and approximately one and one-half years after the *ex parte* communications in *Rexach* and *Khoury*.

Under Canon 3B(3), Judge Segal was compelled to timely report her misconduct and that of Judge Waters to the Judicial Conduct Board. Judge Segal had the opportunity to timely report her misconduct and that of former Judge Waters to the Board long before AUSA Barrett requested that she keep matters confidential. Therefore, by her conduct of failing to timely report the misconduct to the Board, Judge Segal violated Canon 3B(3).

COUNT 4

Judge Segal has violated Canon 3C(1) of the Old Code of Judicial Conduct.

Canon 3(C)(1) provides in 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

The Board proved by clear and convincing evidence that Judge Segal failed to disqualify or recuse herself from *Houdini*, *Rexach* and *Khoury* after she entertained *ex parte* communications from former Judge Waters about those matters. Despite Judge Segal's repeated admissions at deposition and at trial that she should have recused from the three cases, her counsel asked this Court at closing arguments to deny Count 4 for lack of testimony and evidence about personal bias or prejudice concerning a party. Trial N.T. 255:23-266:5. The evidence presented in the Stipulations of Fact and the recordings of intercepted telephone conversations at Board Exhibit 8 demonstrate that Judge Segal's impartiality could reasonably be questioned in *Houdini*, *Rexach* and *Khoury* because former Judge Waters asked for special consideration for particular litigants in each of those cases.

During the September 30, 2011 *ex parte* telephone conversation in the *Houdini* matter, Waters said, "I got something in front of you at 1:00 today." He provided names of the defendants, Donegal and Sammy Kuttub. Segal asked, "And who do we need?" Waters replied, "I said we got the defendant, Donegan." Judge Segal responded, "Oh, okay. Okay," and "Say no more, say no more. Alright." Bd. Ex. 8a. In *Rexach*, former Judge Waters telephoned Judge Segal on June 29, 2012 and informed her that "a friend" filed a petition to reconsider." He then visited her in her robing room to further discuss the request for special consideration for Mr. Rexach. Stipulations of Fact, Paragraphs Nos. 60 & 61.

Finally, in *Khoury*, on July 23, 2012, former Judge Waters asked Judge Segal, "See if you can take a hard look at it. He's ah . . . ah . . . , a friend of mine." Judge Segal verified the identity of his friend when she asked, "Khoury is it? Khoury's a friend of yours?" Former Judge Waters responded, "Yeah, Rich Khoury . . . Don't hurt yourself, but if you can help him, I'd appreciate it." Judge Segal reassured former Judge Waters, "No I will, if he's a friend of yours. I'll look hard at the case. Don't worry about it." Bd. Ex. 8e.

Personal bias or prejudice concerning a party is just one example of a situation in which a judge's impartiality might reasonably be questioned. Here, Judge Segal knew the names of the parties for whom she was asked to provide special consideration in the *Houdini*, *Rexach* and *Khoury* cases because former Judge Waters identified each of them prior to the proceedings. Judge Segal paid attention to those *ex parte* requests as illustrated by her efforts after each proceeding to advise former Judge Waters about her rulings.

After the *Houdini* hearing, Judge Segal called former Judge Waters to tell him that she continued the case, marked it "must be tried," and said, " . . . I did the best I could," and "all for you. Anything. Alright. Well, can we meet for a drink or something." Bd. Ex. 8b. After granting the Petition for Reconsideration in *Rexach*, Judge Segal called former Judge Waters and said, "I figured it out and took care of it," and "I got it. Alright. It was on my um, queue, so I did it. So tell her it's done." Bd. Ex. 8d. Lastly, after remanding the *Khoury* matter, on June 24, 2012, Judge Segal called former Judge Waters and advised him, "And I . . . ah . . . um . . . remanded your friend's thing." Bd. Ex. 8f.

All of these statements demonstrate an appearance of bias or prejudice in favor of certain parties in the *Houdini*, *Rexach* and *Khoury* cases and give rise to significant, reasonable questions about Judge Segal's ability to be impartial in ruling on those matters. Therefore, by her failure to disqualify herself from the proceedings in *Houdini*, *Rexach* and *Khoury*, Judge Segal violated Canon 3C(1).

COUNT 5

Judge Segal has violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

Article V, § 17(b) provides in part:

Justices and judges shall not . . . violate any canon of legal or judicial ethics prescribed by the Supreme Court.

A violation of the Code of Judicial Conduct is an automatic derivative violation of Article V, § 17(b). As a direct result of her violations of Canons 2B, 3A(4), 3B(3) and 3C(1), Judge Segal has violated Article V, § 17(b).

COUNT 6

Judge Segal has violated the Administration of Justice Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

Article V, § 18(d)(1) provides in pertinent part:

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which prejudices the proper administration of justice

By her conduct of engaging in *ex parte* communications before and after the proceedings in *Houdini*, *Rexach* and *Khoury*, and by her failure to recuse in each of those cases, Judge Segal violated the Administration of Justice Clause of Article V, § 18(d)(1). Each of the parties in *Houdini*, *Rexach* and *Khoury*, for whom former Judge Waters requested special consideration, did in fact receive favorable outcomes. The opposing parties and their attorneys in each of the three cases knew nothing about the prohibited *ex parte* communications between former Judge Waters and Judge Segal, and therefore they were deprived of an opportunity to challenge her ability to be impartial and request that Judge Segal recuse herself from their cases.

In its recent analysis of the Administration of Justice Clause in *In re Sullivan*, this Court cited to its controlling precedent as follows:

When a judicial officer's conduct departs from the standard expected of judges and has the effect of obstructing or interfering with the systematic operation or normal functions of the court, his conduct will have affected the proper administration of justice.

In re Sullivan, Slip Op. at 15 (citing *In re Smith*, 687 A.2d 1229, 1237 (Pa.Ct.Jud.Disc. 1996)). When Judge Segal actively listened to former Judge Waters *ex parte* requests for special consideration, when she presided over the three cases

instead of disqualifying herself, and when she placed the *ex parte* follow-up calls to Waters to report the posture of the still-pending proceedings in *Houdini*, *Rexach* and *Khoury*, Judge Segal interfered with the systematic operation or normal functions of the Municipal Court and thereby affected the proper administration of justice.

Besides the evidence of interference with the systematic operation or normal function of the court, the Board must prove that the judge not only knew that the conduct was improper, "but also acted with the knowledge and intent that the conduct would have a deleterious effect upon the administration of justice, for example by effecting a specific outcome." *In re Sullivan*, Slip Op. at 15 (citing *In re Trkula*, 699 A.2d 3, 7 (Pa.Ct.Jud.Disc. 1997))(quoting *Smith*, 687 A.2d at 1238).

Judge Segal admitted at her deposition, in the stipulated facts and at trial that she knew that her conduct of engaging in the *ex parte* communications was wrong. She recognized that her conduct of presiding over, rather than recusing from *Houdini*, *Rexach* and *Khoury* was improper. Her tone of voice and friendly manner during the multiple intercepted telephone conversations with former Judge Waters demonstrate her willingness to discuss his *ex parte* requests for special consideration. She intentionally asked questions to confirm the identity of the parties in *Houdini*, *Rexach* and *Khoury* who were to receive preferential treatment. Judge Segal purposefully called former Judge Waters after granting the continuance in *Houdini*, granting the Petition for Reconsideration in *Rexach* and remanding the case in *Khoury* to give him the impression that she did what he asked her to do.

By her intentional efforts to reassure former Judge Waters that she carried out his requests for special consideration, Judge Segal tried to curry favor and nurture her friendship with him. Judge Segal knew that she needed to shore up

political support within the Democratic Party and her decision to listen to former Judge Waters' *ex parte* requests was inextricably linked, at least in *Houdini*, to her belief that she needed his political support.

Even if Judge Segal's rulings were the same as they would have been absent the prohibited *ex parte* communications, she purposefully led former Judge Waters to believe that his calls influenced her decisions. That approach in *Houdini* led to more *ex parte* communications from former Judge Waters to attempt to influence Judge Segal's decisions in *Rexach* and *Khoury*. Such conduct has a deleterious effect upon the administration of justice and therefore violates Article V, § 18(d)(1).

COUNT 7

Judge Segal violated the Disrepute Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

Article V, § 18(d)(1) provides in pertinent part:

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which . . . brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity.

The Board demonstrated by clear and convincing evidence that Judge Segal's conduct of engaging in *ex parte* communications, presiding over cases in which she had a conflict of interest arising from former Judge Waters' *ex parte* requests for special consideration, failing to recuse, and failing to report the prohibited conduct to the Board brought the judicial office itself into disrepute.

The proof for a violation of the Disrepute Clause requires a showing of conduct "so extreme" that it brings disrepute upon the entire judiciary. *In re Cicchetti*, 743 A.2d 431, 443-44 (Pa. 2000) (citing *In re Smith*, 687 A.2d at 1238

The Board must prove by clear and convincing evidence that the judicial officer engaged in improper conduct, on or off the bench, and the conduct was so extreme that it adversely affected not only the reputation of the particular judge, but also the reputation of the judicial office itself. *In re Berkhimer*, 930 A.2d 1255, 1258 (Pa. 2007).

The standard by which disrepute is measured is “. . . the reasonable expectations of the public of a judicial officer’s conduct.” *In re Carney*, 79 A.3d 490, 494 (Pa. 2013) (citing *In re Merlo*, 58 A.3d 1, 10 (Pa. 2012) and *Berkhimer*, 930 A.2d at 1258). The challenge in deciding a disrepute case is to distinguish whether the underlying conduct reflects poorly on the individual judge or “makes everybody ‘look bad,’ whether it makes judges *collectively* look bad, whether the conduct gives *all* judges a ‘bad name’ – whether it is such that brings the office itself into disrepute.” *Merlo*, 58 A.3d at 10 (citing *Berry*, 979 A.2d 991, 998 (Pa.Ct.Jud.Disc. 2009)(emphasis in the original)).

This Court determines the reasonable expectations of the public by recognizing that a respondent judge represents the judicial office to members of the public and therefore his or her misconduct reflects back on the entire judiciary. *Berkhimer*, 930 A.2d at 1258-59. Therefore, the Court views the alleged misconduct “as if the public knows about it.” *Berry*, 979 A.2d at 999-1000.

In this case, Judge Segal’s repetitive conduct of engaging in *ex parte* communications with former Judge Waters was so extreme that it brought disrepute upon the judicial office itself. Certainly, members of the public could reasonably expect that a judicial officer of the Municipal Court, when confronted with the *ex parte* requests of another judge for special consideration for his “friends,” would

choose to react appropriately and in strict compliance with the mandates of the Code of Judicial Conduct and pertinent provisions of the Constitution of this Commonwealth.

Judge Segal knew that the proper response to former Judge Waters' *ex parte* communications was to reject his requests for special consideration, recuse from the cases and report the misconduct. Instead, Judge Segal made a series of bad choices by engaging in the *ex parte* communications, staying on as the presiding judge in *Houdini*, *Rexach* and *Khoury* without informing the parties or their lawyers about her *ex parte* communications with Waters, and shirking her duty to timely report the prohibited conduct to the Judicial Conduct Board. The sum of all of Judge Segal's conduct was so extreme that it brought disrepute upon the entire judiciary. Therefore, Judge Segal violated the Disrepute Clause of Article V, § 18(d)(1).

III. PROPOSED CONCLUSIONS OF LAW

Judge Segal's conduct, as set forth in the Proposed Findings of Fact, establishes the following violations:

1. At Count 1, the Board has proved by clear and convincing evidence that Judge Segal violated Canon 2B.
2. At Count 2, the Board has proved by clear and convincing evidence that Judge Segal violated Canon 3A(4).
3. At Count 3, the Board has proved by clear and convincing evidence that Judge Segal violated Canon 3B(3).

4. At Count 4, the Board has proved by clear and convincing evidence that Judge Segal violated Canon 3C(1).

5. At Count 5, the Board has proved by clear and convincing evidence that Judge Segal violated Article V, § 17(b) of the Constitution of the Commonwealth of Pennsylvania.

6. At Count 6, the Board has proved by clear and convincing evidence that Judge Segal violated the Administration of Justice Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

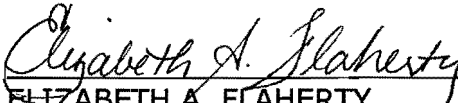
7. At Count 7 the Board has proved by clear and convincing evidence that Judge Segal violated the Disrepute Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

Respectfully submitted

ROBERT A. GRACI
Chief Counsel

Date: March 28, 2016

By:


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**COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE**

IN RE:

Dawn A. Segal
Municipal Court Judge
First Judicial District
Philadelphia County

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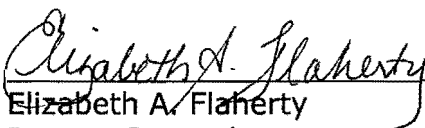
PROOF OF SERVICE

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on March 28, 2016, a copy of the Board's Brief in Support of Proposed Findings of Fact and Conclusions of Law was sent via e-mail and first-class mail to Judge Segal's counsel, Stuart L. Haimowitz, at the following address:

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1910 Land Title Building
100 S. Broad Street
Philadelphia, PA 19110

Respectfully submitted,

DATE: March 28, 2016


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