ORIGINAL

LAW OFFICES OF STUART L. HAIMOWITZ
Stuart L. Haimowitz, Esq.
Identification No. 32174
1910 Land Title Building
100 S. Broad Street
Philadelphia, PA 19110
(215) 972-1543

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:	:	
Dawn A. Segal	:	3JD 2015
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	

BRIEF IN SUPPORT OF PROPOSED FINDINGS OF FACT

AND CONCLUSIONS OF LAW

Pursuant to this Court's Order, Judge Dawn A. Segal, by and through her attorney, Stuart L. Haimowitz, Esquire, files this Brief in Support of Proposed Findings of Fact and Conclusions of Law.

I. PROPOSED FINDINGS OF FACT

SUMMARY OF THE EVIDENCE

1-6. We join in the Board's proposed findings of fact 1-6.

7. As will be more fully set forth below, on four occasions Judge Segal was the recipient of *ex parte* contact from Joseph Waters, [hereafter the former judge] who at the time also was a judge of the Municipal Court of Philadelphia. Joint Stipulated Facts paragraphs 30, 51, 61 & 75.

8. The first communication was on September, 30, 2011 when the former judge initiated a telephone conversation about a case, Houdini, Lock and Safe Company v. Donegal [Houdini], SC-08-09-4192, a case on Judge Segal's Small Claims Court docket later that day. Joint stipulated fact paragraph 30.

9. Nearly a year went by when, on June 29, 2012, the former judge again called about a small claims court matter, City of Philadelphia v. Rexach, [Rexach], CE-12-03-73-0123, in which a petition was pending before Judge Segal. Joint Stipulated Fact paragraph 51, N.T. 195[1].

10. On July, 24, 2012, the former judge called Judge Segal about a matter, Commonwealth v. Khoury, [Khoury] MC-51-CR-001860-2012, listed before Judge Segal for a preliminary hearing. Joint Stipulated Fact paragraph 75, N.T. 198.

11. Although not explicitly stated, in each phone call the former judge sought favorable treatment for one of the parties.

12. As will be more fully set forth below, despite these communications, Judge Segal decided each matter in accordance with her consistent policies and procedures and in accordance with the law as she believed it to be and did not act because of those communications. N.T. 195-199; 201-202; 210; 253-254.

13. After acting as she did, Judge Segal did call the former judge to inform him that she had heard each of the matters.

---

[1]References to N.T. are to the Notes of testimony of the January 28, 2016 trial.

14. As will be more fully set forth below, Judge Segal has acknowledged that she was wrong in failing to immediately tell the former judge to stop calling her about cases, failing to immediately terminate the calls after she realized the purposes for those calls, in not recusing herself from those three matters, in waiting until after he called her in the third matter before telling him to stop, and in not reporting the former judge's conduct.

15. Unknown to former Judge Waters and Judge Segal, from at least September 2011 through at least July, 2012, the FBI conducted a wiretap of former Judge Waters' telephone. The phone calls between Judge Waters and Judge Segal were intercepted on that phone tap.

16. During its investigation into former Judge Waters' illegal conduct, the FBI and federal prosecutors requested that Judge Segal meet with them.

17. As will be more fully set forth below, although under no legal obligation to do so, Judge Segal without requesting any legal protection, met with the federal investigators on a number of occasions and truthfully answered all questions posed to her and testified truthfully before a grand jury. N.T. 212-213.

18-20. We join in the Board's proposed findings of fact 13-15.

21. On May 1, 2014, Judge Segal and her then attorney Brian McMonagle, Esq. met with Assistant United States Attorneys Richard Barrett and Michelle Morgan as well as with FBI agents Eric Ruona and Chad Speicher at the United States Attorneys Office, 615 Chestnut[2] Street, Philadelphia, Pa.

[2]Although we agree with the Board's proposed finding of fact, 16, we write separately because Chestnut Street is misspelled in its proposed finding of fact.

22. It was during the May 1, 2014, meeting that Judge Segal was first played some intercepted phone conversations that occurred years before. After listening to the phone conversations no questioning occurred because Mr. McMonagle ended the meeting. Judge Segal exercised no affirmative decision making to terminate the meeting, but simply followed her attorney's advice. N.T. 211.

23. Prior to listening to the conversations, Judge Segal did not remember the specific facts concerning any of the three cases involved herein. N.T. 203, 205, 209-210.

24. FBI Special Agent Ruona acknowledged that there was nothing unusual in either Mr. McMonagle's ending of the meeting or in Judge Segal's lack of memory concerning the cases or phone conversations. Agent Ruona testified that it would have been unusual had Judge Segal remembered the facts of every case she presided over. Agent Ruona further testified that Mr. McMonagle's conduct in terminating the meeting was something attorneys often did. N.T. 94, 121-122.

25-26. We join in the Board's proposed findings of fact 20-21.

27. During the May 15, 2014 meeting Judge Segal truthfully answered questions posed to her by the agents and ASUAs.

28. We join in the Board's proposed findings of fact 23.

29. On June 3, 2014, Judge Segal voluntarily appeared before a grand jury and testified truthfully without seeking or receiving any promise of immunity or any other legal protection. N.T. 213-214.

30-32. We join in the Board's proposed findings of fact 25-27.

33. By letter dated September 26, 2014, from her attorney, Stuart L. Haimowitz, Esquire, Judge Segal self reported her conduct. Joint Stipulated Exhibit 15.

34-35. We join in the Board's proposed findings of fact 29-30.

36. Although Judge Segal wanted to self report her conduct immediately after the FBI refreshed her recollection about the calls, she waited until September 26, 2014, because the federal prosecutors requested that she maintain the confidentiality of their investigation. N.T. 215-216.

37. After the former judge entered into his guilty plea on September 24, 2014, Judge Segal reasonably believed confidentiality no longer needed to be maintained and her detailed letter self reporting her conduct was sent five (5) days later. Joint stipulated Exhibit 15.

38-43. We join in the Board's proposed findings of fact 32-37.

HOUDINI v. DONEGAL

44-49. We join in the Board's proposed findings 38-43.

50. Houdini v. Donegal was a small claims court case. In Philadelphia small claims court cases go to trial 40-60 days after the filing of a complaint. As explained by experienced civil practitioner, David Dennenberg, the Municipal Court is "very liberal on granting the continuance request because these trials come up very quickly." N.T. 172

51. The granting of the continuance was in accordance with Judge Segal's usual practice when valid day of trial continuances are requested at the first trial listing

of a small claims court trial. Judge Segal's usual practice is "standard policy" in the Municipal Court. N.T. 173, 190.

52. We join in the Board's proposed findings 44.

53. We join in the Board's proposed finding 46.

54-56. We join in the Board's proposed finding 52-54.

57. We join in the Board's proposed finding 61.

58. When interviewed by the prosecutors on December 10, 2013, about matters that had occurred a year and two years before, Judge Segal did not have a specific recollection concerning the cases about which she spoke with the former judge. Judge Segal truthfully told them that she believed all of the cases involved procedural matters such as continuances. After the prosecutors later refreshed her memory, Judge Segal realized that just one matter, the Houdini matter involved a continuance.

59. We join in the Board's proposed finding 63.

60. Judge Segal was truthful in that comment.

61. Agent Ruona testified at the January 28, 2016, trial in this case as to the contents of his interviews with Judge Segal, concerning this case and the two other cases discussed herein . His testimony in January, 2016 about Judge Segal's statements to him in 2013 about the Houdini case was not based upon his specific recollection of the words used by Judge Segal. His testimony was based upon his review of a summary of the conversation written either by him or by a fellow agent days after the conversation. N.T. 102-109.

62. Judge Segal never stated to Agent Ruona nor anyone else that "She thought it was okay to entertain [former] Judge Waters' request for favorable treatment." N.T. 216.

63. Judge Segal's statement to Agent Ruona that the former judge's call "influenced me" was not intended to imply that Judge Segal acted as she did because of the phone call, nor did she mean to imply that the calls affected the case outcomes or her decisions, because the calls did not affect case outcomes or decisions. N.T. 217.

CITY OF PHILADELPHIA V. REXACH

64-72. We join in the Board's proposed findings of fact 80-88.

73. Judge Segal believes that prior to ruling on the Petition for Reconsideration, former Judge Waters may have come to see her personally about the matter. Joint Stipulation of Fact 51.

74-75. We join in the Board's proposed findings of fact 93 and 94.

76. Rexach was a small claims court claims matter and the plaintiff was unrepresented.

77. In accordance with the testimony of David Dennenberg, Esq. and Judge Segal, Judge Segal's decisions both to deny the first petition and to grant the second petition were consistent with the law, her own practice and the practice of her colleagues on the Municipal Court bench. N.T. 165, 192, 195-196.

78. We join in the Board's proposed findings of fact 94

79. During that phone conversation and continuing through the trial before this Court, Judge Segal had no idea who may have contacted the former Judge to request consideration for Rexach.

80. To this day Judge Segal does not know Ian Rexach, nor does she independently know or have any reason to know that he is the son of Judge Angeles Roca. Joint Stipulated Fact paragraph 53, N.T 214-215.

81. We join in the Board's proposed finding of fact 106.

COMMONWEALTH V. KHOURY

82-83. We join in the Board's proposed findings of fact 114-115.

84-87. We join in the Board's proposed findings of fact 117-120

88. Judge Segal's decision to remand the case for a misdemeanor trial was incorrect as a matter of law. However, Judge Segal's decision was based, not upon the *ex parte* communications, but upon her belief, after reviewing the statute, that the issue of "otherwise eligible" was an element of the crime as argued by defense counsel and no contrary credible evidence on this issue was presented by the Board.

89. Both Judge Charles Ehrlich, former Chief of the Municipal Court Unit of the Philadelphia District Attorney's Office and R. Patrick Link, Esq., formerly a prosecutor in the Gun Violence Unit of the Philadelphia District Attorney's Office credibly testified that this mistake was a common mistake made by other

Philadelphia Judges, some with more judicial experience than Judge Segal. N.T. 131-132, 137, 152-154.

90. R. Patrick Link, Esq. credibly testified that the "plain language of the statute" seems to imply that the issue of "otherwise eligible" is a grading issue and not a sentencing issue. N.T. 152-154, 160.

91. When she presided over the preliminary hearing, Judge Segal was unaware of the Supreme Court's holding in Commonwealth v. Bavusa., 574 Pa. 620, 832 A.2d. 1042 (Pa. 2003)

92. Had Judge Segal been aware of the holding in Commonwealth v. Bavusa, she would have followed it. N.T. 201-202

93. We join in the Board's proposed findings of fact 121.

94-98. We join in the Board's proposed findings of fact 126-130.

99. We join in the Board's proposed findings of fact 136.

100. Subsequently Judge Segal did put a stop to the former judge's calls, when after the Khoury case she told him not to call her again.

101. Agent Ruona testified at the January 28, 2016, trial in this case to the contents of his interviews with Judge Segal, concerning this case and the two other cases discussed herein . His testimony in January, 2016 about Judge Segal's statements to him in 2013, about the Khoury case was not based upon his specific recollection of the words used by Judge Segal. His testimony was based upon his review of a summary of the conversation written either by him or by a fellow agent days after the conversation.

102. Judge Segal never stated to Agent Ruona that she was more open to the arguments of the defense attorney because of her relationship with the former judge or because of the former judge's phone call. N.T. 212.

103. Judge Segal's statement to Agent Ruona that the former judge's call "influenced me"was not intended to imply that Judge Segal acted as she did because of the phone call, nor did she mean to imply that the calls affected the case outcomes or her decisions because the call did not affect the case outcomes or decisions. N.T. 217.

104. Although Judge Segal truthfully told the agent that she did give the former judge the impression that she was "helping him out," she never stated she was receptive to his calls, nor was she receptive to his calls.

105-114. We join in the Board's proposed findings of fact 138-147.

ADDITIONAL FINDINGS OF FACT

115. Judge Segal and all of the defense witnesses testified credibly before this Court.

116. Michelle Herman credibly testified that she has known Judge Segal for more than forty (40) years. They met in high school in 1974. She further testified that Judge Segal enjoys a "strong reputation as honest and hard working."

117. Matthew Haggerty, Esq. credibly testified that as both an Assistant Public Defender and later as a private attorney he was familiar with Judge Segal's work habits. He further testified, ""She worked hard. . . She asked for case law when

appropriate. And I felt as though the cases that I should have won, I won. Cases that I should have lost, I lost."

118. Susan Buchwald credibly testified that she has known Judge Segal for more than thirty (30) years. She is familiar with Judge Segal's reputation. She credibly testified that Judge Segal, "is honest, hard working, has a tremendous amount of integrity."

119. William Banton, Esq. credibly testified that he has known Judge Segal "for the better part of my 31, 32 years of practice." they worked together both at the City Solicitor's Office and at a private law firm. He is familiar with Judge Segal's reputation. He further testified, "Judge Segal has a reputation for being very hard working. She has a high degree of sense of fairness. And her reputation is beyond reproach." He further testified that Judge Segal's reputation for honesty is "very high."

120. Retired Justice Jane C. Greenspan credibly testified that she has known Judge Segal for more than twenty five (25) years. She further testified that Judge Segal has an excellent reputation for being honest and hard working.

121. Administrative Law Judge Howard Wishnoff credibly testified that he has known Judge Segal for more than thirty five (35) years. He is familiar with Judge Segal's reputation. He further testified that Judge Segal, is "probably . . . considered the most honest and the most hard working person, attorney that - -I know. And certainly the people that have commented about her over the years have all had the same feeling."

122. R. Patrick Link, Esq. credibly testified that he appeared fairly frequently before Judge Segal. He described her judicial conduct and temperament by saying she was " . . . .willing to let both sides make their cases and present their case law, their arguments and not pretend she knows things she doesn't . . I always thought she was trying to give fair results." N.T. 155-156.

123. Ellen Greenlee credibly testified that for twenty five (25) years until she retired in March, 2015, she was the chief defender at the Philadelphia Defender's office and supervised the 600 employees in that office. She maintained an "open door" policy and encouraged her employees to talk to her about issues including the conduct of judges. Never did anyone come to her to complain about the conduct of Judge Segal. In addition she has known Judge Segal for "probably" thirty (30) year as a friend. She is familiar with Judge Segal's reputation. She further testified, " Judge Segal enjoys a very fine reputation for her temperament, for her knowledge of the law, and especially, I think, for how she treats everyone who comes into her courtroom with the greatest respect, whichever side they're on. And a reputation for being even handed in dealing with the prosecution and the defense and not favoring one side over the other or one party over the other."

124. Although Judge Segal had *ex parte* contact with former Judge Waters, for which she self reported, Judge Segal never made any judicial decision because of or based upon that contact.

125. Judge Segal's decisions in each of these three cases followed her normal procedures and practices and would have been the same decisions had the former judge never contacted her.

126. In addition to fully cooperating with the federal criminal investigation and truthfully answering the questions posed to her, Judge Segal fully cooperated with the Judicial Conduct Board's investigation and truthfully answered all questions posed to her.

127. No evidence ever has been presented to suggest or imply that Judge Segal ever was the subject of any criminal investigation.

128. As a Municipal Court Judge, Judge Segal volunteered to assume additional work that many of her colleagues decline to do. Specifically, Judge Segal had been just one of two judges in that court who agreed to take on the responsibility to review Petitions to Open Default Judgments and Petitions for Reconsideration of the denials of the Petitions. That additional responsibility added an extra hour of work each day for Judge Segal. N.T. 192-196.

129. No credible evidence has been presented to demonstrate why Judge Segal failed to stop the former judge from making these requests. Indeed to this day, Judge Segal subjectively is unaware why she allowed this to continue for these three cases and stopped the contact only after the third case.

CONCLUSIONS OF LAW

1. Judge Segal acted in a neutral manner and impartially granted the continuance in Houdini.
2. Judge Segal's granting of the continuance in Houdini was based upon her standard practice and procedure. Therefore, she did not give the defense any special consideration nor any favorable treatment.
3. Judge Segal acted in a neutral manner and impartially decided both motions in Rexach.
4. Judge Segal's decisions in Rexach were based upon her standard practice and procedure and were correctly based upon the law. Therefore she did not give the defendant in Rexach any special consideration nor any favorable treatment.
5. Judge Segal acted in a neutral manner and impartially decided the preliminary hearing in Khoury.
6. Judge Segal's decision in Khoury was based upon her standard practice and procedure and was based upon the law as she believed it to be. Therefore she did not give the defendant in Khoury any special consideration nor any favorable treatment. Judge Segal simply made an error of law.
7. Judge Segal's friendly relationship with the former judge did not affect her decisions in Houdini, Rexach or Khoury.
8. Judge Segal's conduct did not prejudice the proper administration of justice and therefore Judge Segal did not violate the Administration of Justice Clause of Article V, §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

9. Judge Segal's conduct did not bring the judicial office into disrepute and did not cause the judiciary to be held in disrepute, and, therefore Judge Segal did not violate the Disrepute Clause of Article V §18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

10. Judge Segal did not consider the ex parte communications in making her decisions in any of the three above noted cases and therefore the Board has not proven a violation of Canon 3A(4) of the Old Code of Judicial Conduct.

11. Although it was not her intention, Judge Segal has acknowledged that she did convey the impression to the former judge that he was in a special position to influence her in violation of Canon 2B of the Old Code of Judicial Conduct.

12. Although it was not her intention to violate Canon 3B(3) of the Old Code of Judicial Conduct , Judge Segal has acknowledged that she did not take or initiate appropriate disciplinary measures against the former judge in violation of that Canon.

13. Although it was not her intention to violate Canon 3C(1) of the Old Code of Judicial Conduct, Judge Segal has acknowledged that she did not disqualify herself in any of the three proceedings. However, as Judge Segal had no personal bias nor prejudice in favor of or against any party in these matters, she did not violate Canon 3C(1) (a) as charged.

14. Judge Segal's admitted unintentional violations of the Judicial Canons noted above trigger the derivative violation of Article V §17(b) of the Constitution of Commonwealth of Pennsylvania.

15. Judge Segal timely self reported her conduct to the Judicial Conduct Board.

16. There are substantial mitigating factors in this case, including, but not limited to:

a. Judge Segal's lack of intent to violate any canon, rule, or constitutional provision;

b. Judge Segal' s genuine remorse;

c. Judge Segal's stellar reputation and good character both as a judicial officer and as an individual earned over her entire adulthood.

d. Judge Segal's timely self reporting of her conduct;

e. Judge Segal's cooperation with the federal government's criminal investigation, which did not involve her conduct and with the Judicial Conduct Board's investigation into her conduct.

DISCUSSION

The evidence in this case is crystal clear. Judge Segal acted in all three of these cases; Houdini, Rexach and Khoury[3]; fairly and impartially, consistent with her usual practice and procedure and based upon the law as she perceived it to be. Never has there been any allegation that she acted any differently. Judge Segal has acknowledged from the beginning that she should not have taken the former judge's calls, that she more quickly should taken action to have him

[3]Although irrelevant to the underlying issues in this case, as reported in the newspaper article introduced as Joint Exhibit 16, the cousin in Khoury "was an undercover federal agent and the charges against him had been staged." It appears that the government in an "ends justifying the means" approach to law enforcement coached a law enforcement officer to knowingly give false testimony under oath in that preliminary hearing. We bring this up because even if this was a case about granting "special consideration," which it is not, as a matter of law "special consideration" can not be given to someone who does not exist and was not facing any actual criminal charge, or in any other way was put in jeopardy.

stop making these calls; that she should have reported his conduct and that she should have recused herself. Indeed counsel for the Board, throughout her opening and closing arguments, characterized this case as "Reject, recuse and report, those were the actions required of Judge Segal." See e.g. N.T. 13. This Court should make factual findings, legal conclusions and impose sanctions based upon that conduct and only that conduct.

In its brief, the Board, in an attempt to psychoanalyze Judge Segal, stretches the facts to try to weave into the facts a suggested a political reason why Judge did not "reject, recuse and report." All of these proposed findings of fact should be rejected, as this alleged "motive" is nothing more than speculation, not based upon the evidence. Judge Segal has been candid from day one. She was friendly with the former judge; they ran for office together; she did consider him more of a "political insider" than she was[4]; and the first phone call from the former judge coincidently occurred just a few hours after Judge Segal read a newspaper article in which another "political insider" who had demanded money from judicial candidates and threatened her when she first ran for office, again threatened to extort money from judicial candidates running for retention. Contrary to the Board's claims, these few facts do not prove, by the requisite burden of proof that Judge Segal was more likely to take the former judge's calls because of his political connections. Indeed, no clear and convincing evidence can be established to prove why Judge Segal acted as she did. The evidence does establish that Judge Segal has wrestled for years to try to answer that question. She may never know and this Court should make no factual findings as to why she even took the former judge's calls.

[4]Indeed the evidence disclosed that anyone and everyone running for office was more of a "political insider" than Judge Segal.

In addition, we strongly suggest to this Court that its recent decision in In *re* Eakin, No. 13 JD 15 necessitates a finding that Judge Segal timely self reported her conduct. In Eakin, the respondent Justice's conduct occurred from 2008 until 2012. The Justice self reported his conduct in October, 2014, two (2) years after the last offending act. This Court found the report to be timely. Instantly, the acts occurred in 2011 and 2012. Judge Segal self reported in September 2014, again two (2) years after the last offending act. In contrast to Eakin, compelling evidence exists for this Court to find that from the period when Judge Segal first met with the prosecutors in 2013 until she self reported in September 2014, Judge Segal reasonably believed that she needed to maintain the confidentiality of the federal investigation. She self reported immediately after former Judge Waters change of plea memorandum became public and the need for confidentiality no longer existed. Accordingly, Judge Segal also reported her conduct timely.

Next, this Court consistently has held that in order to find a judicial officer's conduct brought the judicial office into disrepute the Board must make a persuasive showing that the conduct of the judge was so extreme as to have brought the judicial office itself into disrepute. It is insufficient if the conduct has resulted only in the lessening of respect for that particular judge and has not brought disrepute to the judiciary as a whole. In *re* Smith, 687 A.2d. 1229, 1239 (Pa. Ct. Jud. Disc. 1996). See also In *re* DeLeon, 967 A.2d. 460, 465 (Pa. Ct. Jud. Disc. 2008). "Disrepute necessarily incorporates some standard with regard to reasonable expectations of the public of a judicial officer's conduct." Smith, *supra* at 1240. "It cannot be *presumed* that a violation of any other provision, constitutional, canonical or criminal *automatically* lowers

public acceptance of the authority of the judicial office. Smith, *supra* at 1238 (emphasis in original.)

This Court has been very specific, measured and limited in finding judicial conduct to have brought the judicial office into disrepute. Generally, this has been reserved for the most egregious judicial conduct such as attempting to influence the outcome of a case or "fix" a case. See e.g. In *re* Trkula, 699 A.2d. 3 (Pa. Ct. Jud. Disc. 1997); In *re* Joyce and Terrick, 712 A.2d. 834 (Pa. Ct. Jud. Disc. 1998); In *re* Kelly, 757 A.2d. 456 (Pa. Ct. Jud. Disc. 2000); and In *re* Zupsic, 893 A.2d. 875 (Pa. Ct. Jud. Disc. 2005). In addition to attempting to fix a case, this Court has found similar outrageous conduct such as indicating in a campaign speech that those who make contributions could expect favorable treatment In *re* Singletary, 967 A.2d. 1094 (Pa. Ct. Jud. Disc. 2008) and falsely creating a judicial document to assist a friend in a purely personal matter , In *re* DeLeon, *supra,* to be conduct that brought the judicial office into disrepute. This Court also has found the following outrageous behavior to have brought the judicial office into disrepute: sexual harassment of courthouse employees, In *re* Cicchetti, 697, A.2d. 297, (Pa. Ct. Jud. Disc. 1997); aff'd 784 A.2d. 431 (Pa. 2000); financial improprieties in one's judicial office, In *re* Strock, 727 A.2d. 653 (Pa. Ct. Jud. Disc. 1998); angry use of the "f" word in court, In *re* Zoller, 792 A.2d. 34 (Pa. Ct. Jud. Disc. 2001); public drunkenness, In *re* McCarthy, 828 A.2d. 25, (Pa. Ct. Jud. Disc. 2003); placing bogus parking tickets on cars to avoid paying a parking meter, In *re* Harrington, 877 A.2d. 570 (Pa. Ct. Jud. Disc. 2005); calling litigants "morons," In *re* Marraccini, 908 A.2d. 377 (Pa. Ct. Jud. Disc. 2006); engaging in a fistfight at a public golf outing, In *re* Hamilton, 932 A.2d. 1030 (Pa. Ct. Jud. Disc. 2007); and running a purely personal business out of one's judicial chambers utilizing court employees as

employees of the business, In *re* Berry, 979 A.2d. 991 (Pa. Ct. Jud. Disc. 2009). There simply is no precedent in which an honest judge properly and honestly handled matters in accordance with her longstanding policies and procedures and in accordance with the law as she understood it to be despite *ex parte* contact from a corrupt judge., but failed to "reject, recuse[5] and report" was found to have engaged in conduct which brought the judicial office in to disrepute. Accordingly this Court should reject Count 7.

Similarly, this Court has been very specific, measured and limited in finding judicial conduct to have prejudiced the administration of justice. This Court has held "that a *sine qua non* of the 'proper administration of justice' is an impartial judge." In *re* Cioppa, 51 A.2d. 923, 930 (Pa. Ct. Jud. Disc. 2012.) In In *re* Zupsic, *supra*, this Court has further held "[I]n order to qualify as conduct which prejudices the proper administration of justice the judicial officer must have acted with the knowledge and intent that the conduct would have a deleterious effect upon the administration of justice, for example, by affecting a specific outcome." Zupsic, *supra* at 889. In this case the evidence clearly demonstrates that Judge Segal was nothing but an "impartial judge," despite the improper contact. She never acted to affect a specific outcome. Accordingly this Court should reject Count 6.

In summary we implore this Court not to paint with a broad brush. As stated by counsel for the Board, the crux of this case is that Judge Segal did not "reject, recuse and report." Judge Segal is not liable for the corrupt conduct of former Judge Waters, nor should she be liable for

[5] We do acknowledge that in In *re* Lokuta, 964 A.2d. 988, (Pa. Ct. Jud. Disc. 2008) failure to recuse was but one of many factors noted by this Court in finding conduct to have brought the judicial office in to disrepute . However in that case the judge repeatedly was late for court, engaged in disrespectful and demeaning behavior in the courtroom, engaged in bizarre behavior in chambers, falsely accused a court employee of harassment and utilized the services of a law clerk for personal work. That case has no applicability to the instant matter.

the conduct of any other judge who may have had contact with the former judge. Judge Segal has been suspended without pay since February 2, 2016, a few days following trial in this case. As we indicated previously, we have no additional evidence to present on the issue of penalty. We do not believe counsel for the Board intends to present evidence on the issue of penalty. We do not believe it necessary for this Court to reconvene to take any testimony on the issue of penalty. We are prepared to argue penalty immediately. We do note however, that the instant conduct is significantly less egregious than the conduct that occurred in In *re* DeLeon, *supra*. In that case the respondent judge abused his office by falsely creating an order simply to benefit an acquaintance. That case involved gross dishonesty. This case does not. In that case this Court ordered a three (3) month suspension. Judge Segal, who presented compelling evidence in mitigation already has been suspended without pay for nearly that amount of time.

Respectfully submitted,

STUART L. HAIMOWITZ
Counsel for Judge Dawn A. Segal

SLH:tfo

LAW OFFICES OF STUART L. HAIMOWITZ
Stuart L. Haimowitz, Esq.
Identification No. 32174
1910 Land Title Building
100 S. Broad Street
Philadelphia, PA 19110
(215) 972-1543

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:	:	
Dawn A. Segal	:	3JD 2015
Municipal Court Judge	:	
First Judicial District	:	
Philadelphia County	:	

AFFIDAVIT OF SERVICE

I hereby certify that in accordance with Rule 122 (E) I have this day served by First Class Mail and/or overnight delivery, the attached document upon:

Elizabeth A. Flaherty, Assistant Counsel
Judicial Conduct Board
Suite 3500, Pennsylvania Judicial Center
601 Commonwealth Ave.
Harrisburg, PA 17106-2595

Dated this 13th day of April, 2016

STUART L. HAIMOWITZ
Counsel for Judge Dawn A. Segal