

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

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

No. 3 JD 15

RECEIVED AND FILED
COURT OF
JUDICIAL DISCIPLINE
OF PENNSYLVANIA

2016 JUL 21 P 1:35

BEFORE: Honorable Jack A. Panella, P.J., Honorable Robert J. Colville, P.J., Honorable John J. Soroko, J., Honorable David J. Shrager, J., Honorable David J. Barton, J., Honorable Doris Carson Williams, J., Honorable Carmella Mullen, J.

OPINION BY JUDGE SHRAGER

DATE: JULY 21, 2016

OPINION

Municipal Court Judge Dawn A. Segal (Respondent Segal) appears before this Court accused of seven (7) counts of misconduct arising from conversations she had with former Judge Joseph C. Waters, Jr. (Waters) wherein he requested she find for several litigants he favored in cases before her. Respondent Segal admits she did find in favor of those litigants but maintains she would have done so anyway on the merits even without the *ex parte* communications from Waters.

We make the following Findings of Fact:

FINDINGS OF FACT

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, Respondent Segal began her service as Judge of the Municipal Court of Philadelphia, Pennsylvania.

3. During her service as Municipal Court Judge, Respondent 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.

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

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

6. In 2011 and 2012, Respondent Segal and Waters, served as judges of the Municipal Court of Philadelphia.

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

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

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

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

11. On May 1, 2014, Respondent 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 Chestnut Street, Philadelphia, Pennsylvania.

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

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

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

15. On May 15, 2014, Respondent Segal and her attorneys, Stuart L. Haimowitz and Jack Gruenstein 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 Chestnut Street, Philadelphia, Pennsylvania.

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

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

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

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

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

21. On September 24, 2014, 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.

22. Within the negotiated guilty plea agreement of Waters, which incorporates the two count Information, are excerpts of conversations he initiated with Respondent 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).

23. 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 Respondent Segal pertaining to her *ex parte* communications with Waters.

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

25. In the September 29, 2014, letter to the Board, Respondent Segal self-reported that Waters also initiated an *ex parte* communication with her regarding a third case, *City of Philadelphia v. Rexach Ian C.*

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

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

Houdini v. Donegal

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

29. Before the *Houdini* hearing but on September 30, 2011, Waters called Respondent Segal on the telephone about the hearing that was pending before her.

30. On September 30, 2011, the following wiretapped conversation between Waters and Respondent Segal occurred:

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

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

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

Respondent Segal: Okay.

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

Respondent Segal: Okay. And uh, okay.

Former Judge Waters: You know Sam?

Respondent Segal: And who do we need?

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

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

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

Respondent Segal: Oh, okay. Okay.

Former Judge Waters: Alright?

Respondent Segal: Say no more. Say no more.
Alright. See Board Exhibit 8a.

31. Prior to September 30, 2011, Respondent Segal was not acquainted with Samuel Kuttab.

32. 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.

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

34. Later on September 30, 2011, Respondent Segal called Waters and informed him that she had continued the *Houdini* matter as requested.

35. On September 30, 2011, the following wiretapped conversation between Waters and Respondent Segal occurred:

Former Judge Waters: Hey, how ya doing?

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

Former Judge Waters: Okay.

Respondent 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.

Respondent 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.

Respondent Segal: Alright...

Former Judge Waters: Alright.

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

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

Respondent 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]

Respondent 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.

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

Former Judge Waters: Alright. Bye-bye.

Respondent Segal: Bye-bye.

See Board Exhibit 8b.

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

37. In the first September 30, 2011, recorded telephone conversation, quoted at Paragraph No. 30 above, Respondent Segal participated in an *ex parte* communication with Waters about the *Houdini* hearing, a matter that was pending before her.

38. In the second September 30, 2011, recorded telephone conversation, quoted at Paragraph No. 35 above, demonstrates that Respondent Segal participated in an *ex parte* communication with Waters about the *Houdini* hearing, a matter that she ruled on earlier that day.

39. The September 30, 2011, recorded telephone conversations, quoted at Paragraph Nos. 30 & 35 above, Respondent Segal entertained an *ex parte* request to provide favorable treatment to the litigant, Donegal, and to Kuttab.

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

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

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

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

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

45. On September 30, 2012, Respondent Segal called 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.

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

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

48. FBI Special Agents Eric H. Ruona and Maureen Poulton first interviewed Respondent 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.

49. Respondent Segal did not report her September 30, 2011, *ex parte* telephone communications with Waters regarding the *Houdini* matter to the Judicial Conduct Board for over a year after it occurred.

50. Respondent Segal was friendly with Waters. Tr. N.T. 41:5-7.

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

52. During the December 10, 2013, interview with federal prosecutors, Respondent Segal said that none of the requests from 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.

53. During the December 10, 2013, interview with federal prosecutors, Respondent Segal said that the calls from 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.

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

55. Respondent 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.

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

a. She admitted that her two September 30, 2011 phone calls with 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 for Waters after granting the continuance in *Houdini*. *Id.* at 62:7-10.

d. She did not say "no" to 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 believed that Waters was trying to influence her when he called her about the *Houdini* case. *Id.* at 63:19-64:9.

f. She wanted Waters to believe that she went along with his request. *Id.* at 64:12-15.

g. She and Waters were friends and she trusted him. *Id.* at 63:7-9; 64:25-65:6-7.

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

a. She recognized that the phone calls from 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 Waters the impression that she was doing what he asked her to do. *Id.* at 77:25-78:16.

c. She wanted to give 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 Waters to assist and support her. She wanted to avoid making him her enemy. *Id.* at 78:22-79:2.

e. She knew that 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.

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

59. 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.

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

61. During and after the 2009 primary election, Respondent 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.

62. Respondent Segal admitted that the September 30, 2011, news article impacted her *ex parte* conversation with 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.

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

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

65. Respondent Segal stated she did not reject the request of Waters for special consideration because she "was just so upset about that article." *Id.* at 187:14-18.

66. At the March 28, 2016, trial, Respondent Segal made the following statement about why she placed the *ex parte* follow-up call to 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.

67. At trial, Respondent Segal stated that she did not report 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.

68. Respondent Segal 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.

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

City of Philadelphia v. Rexach

70. By means of a September 29, 2014, letter from her counsel, Respondent Segal self-reported to the Board that 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 Waters. See Bd. Ex. 16.

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

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

73. 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.

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

75. On June 12, 2012, Respondent 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.

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

77. The *Rexach* petition for reconsideration alleged a meritorious defense, i.e. lack of proportionality of damages.

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

79. On June 29, 2012, the following intercepted voicemail message from Respondent Segal to Waters occurred:

Respondent Segal: Hi Joe, its 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]

See Bd. Ex. 8c.

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

81. As disclosed in Respondent Segal's September 29, 2015, letter to the Judicial Conduct Board, during their June 29, 2012, telephone conversation, Waters informed Respondent 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.

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

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

84. Two days after issuing a Rule to Show Cause in the *Rexach* case, on July 1, 2012, Respondent Segal called Waters. See Bd. Ex. 8d.

85. On July 1, 2012, the following intercepted telephone conversation occurred between Respondent Segal and Waters:

Former Judge Waters:	[23 seconds of phone ringing] Hey, what's up?
Respondent Segal:	Hi, I figured it out and I took care of it.
Former Judge Waters:	Oh, okay. Thank you.
Respondent 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.

Respondent Segal: Alright, you take care.
Former Judge Waters: You too
Respondent Segal: . . . for you. Alright, bye.

See Bd. Ex. 8d.

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

87. By her June 29, 2012, *ex parte* communications with Waters regarding the *Rexach* matter, Respondent Segal entertained requests to provide favorable treatment to the litigant, *Rexach*, who was favored by Waters.

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

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

90. On June 29, 2012, Respondent 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 Waters prior to her review and decision regarding the petition for reconsideration.

91. Respondent 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 Waters.

92. On July 1, 2012, Respondent Segal called 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.

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

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

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

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

97. FBI Special Agent Ruona testified at trial that during the June 3, 2014, interview, Respondent 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.

98. At the March 28, 2016, trial, Respondent Segal described her reactions to the June 29, 2012, *ex parte* phone call from 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.

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

100. At trial, Respondent 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.

101. At trial, Respondent Segal said that she did not know why she did not "figure out" the right approach to dealing with the *ex parte* calls from 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.

102. At trial, when asked about her July 1, 2012, statement to Waters "I got it. All right. It was on my queue, so I did it. So tell her it's done," 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

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

104. During the July 23, 2012, telephone conversation, Waters informed Respondent 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.*

105. On July 23, 2012, the following intercepted telephone conversation between Waters and Respondent Segal occurred:

Respondent Segal:	Hello?
Former Judge Waters:	Dawn, how are you?
Respondent 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.
Respondent 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.

Respondent 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.

Respondent 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.

Respondent Segal: Alright. Take care.

Former Judge Waters: Okay. Bye-bye.

Respondent Segal: Bye-bye.

See Bd. Ex. 8e.

106. 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.

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

108. During the *Khoury* Preliminary Hearing, Respondent Segal heard extensive argument about the elements and grading of the crime, Firearms Not to Be Carried Without a License, but no case law including *Commonwealth v. Bavusa*, 832 A.2d 1042 (Pa. 2003) was presented to her on this issue.

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

110. On July 24, 2012, Respondent Segal called Waters and advised him that she remanded the *Khoury* matter.

111. On July 24, 2012, the following intercepted conversation between Respondent Segal and Waters occurred:

Respondent Segal:	Joe?
Former Judge Waters:	Hey, Dawn. How are you doing?
Respondent Segal:	I'm good, how are you?
Former Judge Waters:	Okay. What's going on?
[Language not related to charged conduct removed]	
Respondent Segal:	And I...ah...um...remanded your friend's thing.
Former Judge Waters:	I appreciate that. You're the best.
Respondent Segal:	Okay, you take care.
Former Judge Waters:	Alright, baby. Bye-bye.
Respondent Segal:	Bye-bye.

See Bd. Ex. 8f.

112. By her July 23 and 24, 2012, telephone conversations with Waters, quoted at Paragraph Nos. 105 and 111, Respondent Segal engaged in *ex parte* communication about the *Khoury* case, a matter pending before her.

113. By her July 23, 2012, telephone conversation with Waters, quoted at Paragraph No. 105, Respondent Segal entertained an *ex parte* request to provide favorable treatment to a litigant, *Khoury*, who is favored by Waters.

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

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

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

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

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

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

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

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

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

123. Respondent Segal did not promptly report her July 23, 2012, *ex parte* telephone communication with Waters regarding the *Khoury* matter to the Judicial Conduct Board.

124. FBI Special Agent Ruona testified at trial that the May 15, 2014, meeting, Respondent 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 at 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 it did not affect her ruling in *Khoury*, *Id.* at 67:8-16.

c. She recognized that she should have recused when she received that July 23, 2012 call from former Judge Waters. *Id.* at 67:3-7.

125. FBI Special Agent Ruona testified at trial that during the June 3, 2014, interview, Respondent 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.

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

127. FBI Special Agent Ruona testified at trial that during the June 3, 2014, interview, Respondent Segal admitted that her tone of voice during the

intercepted recorded telephone calls with Waters sounded as though she was happy to do what he had asked of her. *Id.* at 84:3-85:1.

128. At the March 28, 2016, trial, Respondent Segal stated that when 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.

129. At trial, Respondent 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.

130. At trial, Respondent Segal said the calls from Waters 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.

131. 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, Respondent 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.

132. At trial, Respondent 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.

DISCUSSION

Count 1

In Count 1 Respondent Segal is accused of violating Canon 2B of the then applicable, old (Pre-2014) Code of Judicial Conduct. Canon 2B provides in relevant part that:

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

As set forth in the Findings of Fact, Respondent Segal engaged in *ex parte* communications multiple times with Waters about three cases pending before her. Respondent Segal listened to the requests of Waters, asked pertinent questions, found in favor of those three parties and then called Waters after doing so to let him know of her compliance. At no time did Respondent Segal indicate to Waters that she would do anything other than go along with his illegal requests. There is no question that Respondent Segal conveyed the impression to Waters that he was in a special position to influence her. Respondent Segal is in violation of Count 1.

Count 2

Count 2 alleges that Respondent Segal violated Canon 3A(4) of the old Code of Judicial Conduct. Canon 3A(4) provides:

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

As recited previously, Respondent Segal repeatedly considered *ex parte* communications from Waters in three separate matters. Respondent Segal is in violation of Count 2. Respondent Segal engaged in repeated *ex parte* communications concerning the three cases at issue, and claimed credit for her compliant rulings with Waters.

There is no requirement in that the "consideration" given to the *ex parte* requests be determinative of the errant judge's decision in Canon 3A(4) of the old Code. All that is required is that the *ex parte* communication be considered which it obviously was here.

Count 3

Count 3 contains the allegation that Respondent Segal violated Canon 3B(3) of the old Code of Judicial Conduct. That Canon states:

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

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

Respondent Segal's duty to report her *ex parte* communications arose on the day they occurred. In the *Houdini* matter the duty arose on September 30, 2011. In *Rexach*, the duty to report arose on June 29, 2012.

Although Respondent Segal argues that she believed she was constrained from reporting Waters' *ex parte* communications because of a federal request for confidentiality, she admitted at trial that the request came from Assistant United States Attorney Richard A. Barrett. Respondent Segal first met with AUSA Barrett on December 10, 2013, more 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*. Respondent Segal did not take appropriate action here as required by Canon 3B(3) of the old Code.

Count 4

Respondent Segal is accused of violating 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

Respondent Segal's impartiality could reasonably be questioned in *Houdini*, *Rexach* and *Khoury* because Waters asked for special consideration for particular litigants in each of those cases and was told by Respondent Segal that they would be so favored.

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 Kuttab. Respondent Segal asked, "And who do you need?" Judge Waters replied, "I

said we got the defendant, Donega.” Respondent Segal responded, “Oh, okay. Okay,” and “Say no more, say no more. Alright.” Board Exhibit 8a. In *Rexach*, Waters telephoned Respondent 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.

Finally, in *Khoury*, on July 23, 2012, Waters asked Respondent Segal, “See if you can take a hard look at it. He’s ah ... ah ..., a friend of mind.” Respondent Segal verified the identity of his friend when she asked, “Khoury is it? Khoury’s a friend of yours?” Waters respondent, “Yeah, Rich Khoury ... Don’t hurt yourself, but if you can help him, I’d appreciate it.” Respondent Segal reassured Waters, “No I will, if he’s a friend of yours. I’ll look hard at this case. Don’t worry about it.”

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, Respondent Segal knew the names of the parties for whom she was asked to provide special consideration in the *Houdini*, *Rexach* and *Khoury* cases because Waters identified each of them prior to the proceedings. Respondent Segal paid attention to those *ex parte* requests as illustrated by her efforts after each proceeding to advise Waters about her rulings.

After the *Houdini* hearing, Respondent Segal called 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.” After granting the Petition for Reconsideration in

Rexach, Respondent Segal called 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." Lastly, after remanding the *Khoury* matter, on June 24, 2012, Respondent Segal called Waters and advised him, "And I ... ah ... um ... remanded your friend's thing."

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 Respondent 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* Respondent Segal violated Canon 3C(1).

Count 5

Respondent Segal is accused of violating 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 violations of Article V, §17(b). As a direct result of her violations of Canons 2B, 3A(4), 3B(3) and 3C(1), Respondent Segal has violated Article V, §17(b).

Count 6

Respondent Segal is accused of violating 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, Respondent Segal violated the Administration of Justice Clause of Article V, §18(d)(1). Each of the parties in *Houdini*, *Rexach* and *Khoury*, for whom Waters requested special consideration, did in fact receive a favorable outcome. The opposing parties and their attorneys in each of the three cases knew nothing about the prohibited *ex parte* communications between Waters and Respondent Segal, and therefore they were deprived of an opportunity to challenge her ability to be impartial and request that Respondent 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, 135 A.3d 1164, 1173 (Pa.Ct.Jud.Disc. 2016) (citing *In re Smith*, 687 A.2d 1229, 1237 (Pa.Ct.Jud.Disc. 1996)). When Respondent Segal actively listened to 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*, Respondent

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 affecting a specific outcome." *In re Sullivan, supra*, (citing *In re Trkula*, 699 A.2d 3, 7 (Pa.Ct.Jud.Disc. 1997)) (quoting *Smith*, 687 A.2d at 1238).

Respondent Segal admitted 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. She intentionally asked questions to confirm the identity of the parties in *Houdini*, *Rexach* and *Khoury* slated to receive preferential treatment. Respondent Segal called 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.

Even if Respondent Segal's rulings were the same as they would have been absent the prohibited *ex parte* communications, she purposefully led Waters to believe that his calls influenced her decisions. At a minimum, that approach seems to have led to more *ex parte* communications from Waters seeking to influence Respondent Segal's decisions as shown by Waters' further attempts in *Rexach* and *Khoury*, after his apparent success in

Houdini. Respondent Segal's conduct in engaging in repeated *ex parte* contacts, saying she was agreeing to favor certain litigants, assuring Waters that she had ruled as requested and, effectively, encouraging more such *ex parte* communications from Waters deleterious effect upon the administration of justice and therefore violates Article V, §18(d)(1).

Count 7

Respondent Segal is alleged to have 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 evidence shows that Respondent Segal's conduct of engaging in *ex parte* communications, presiding over cases in which she had a conflict of interest arising from 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 that 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, Respondent Segal’s repeated conduct of engaging in *ex parte* communications with 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, when confronted with the *ex parte* requests of another judge for special consideration for his “friends,” would choose to react appropriately and in compliance with the mandates of the

Code of Judicial Conduct and pertinent provisions of the Constitution of this Commonwealth.

Respondent Segal knew that the proper response to Waters' *ex parte* communications was to reject his requests for special consideration, recuse from the cases and report the misconduct. Instead, Respondent Segal repeatedly 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 quickly report the prohibited conduct to the Judicial Conduct Board. The sum of all of Respondent Segal's conduct is extreme enough that it has brought disrepute upon the judiciary. Therefore, Respondent Segal violated the Disrepute Clause of Article V, §18(d)(1).

CONCLUSIONS OF LAW

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

5. At Count 5, the Board has proved by clear and convincing evidence that Respondent 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 Respondent 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 Respondent Segal violated the Disrepute Clause of Article V, § 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania.

The parties may file written objections within ten (10) days of this Opinion.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

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

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ORDER

AND NOW, this 21st day of July, 2016, based upon the
Conclusions of Law, it is hereby ORDERED:

Pursuant to C.J.D.R.P. No. 503(A), the Opinion with Findings of Fact and Conclusions of Law as filed shall be served upon the Judicial Conduct Board and the Respondent.

In accordance with C.J.D.R.P. No. 503(B), either party may file written objections within ten (10) days of this Order. Said objections shall include the basis therefor and shall be served on the opposing party. In the event that such objections are filed, the Court shall determine whether to entertain oral argument upon the objections and set a date for argument.

In the event that objections are not filed, the Findings of Fact and Conclusions of Law shall become final, and this Court will issue an Order setting a date, pursuant to C.J.D.R.P. No. 504, for a hearing on the issue of sanctions.

PER CURIAM