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OF PENNSYLVANIA

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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

**IN RE:**

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

**OBJECTIONS TO THE JULY 21, 2016, OPINION OF THIS COURT**

Pursuant to this C.J.D.R.P. No. 503(B), Judge Dawn A. Segal, by and through her attorney, Stuart L. Haimowitz, Esquire, files these Objections to the July 21, 2016, Opinion of this Honorable Court:

**I. GENERAL STATEMENT OF BASIS FOR OBJECTIONS**

This Court in its Opinion ignored uncontested facts, ignored uncontested credible testimony, including certain testimony of Judge Segal, ignored certain controlling case law, and found other facts which have no basis in the evidence. The Court in its Opinion adopted the Board's proposed facts and conclusions with no reasoned consideration of the factual and character testimony presented on behalf of Judge Segal. As a result, this Court improperly concluded Judge Segal's conduct violated violated Canon 3A(4) of the Old Code of Judicial Conduct (Count 2), Canon 3C(1) of the Old Code of Judicial Conduct (Count 4), the Administration of Justice Clause of Article V, §18(d)(1) of our Constitution, (Count 6), and the Disrepute Clause of Article V §18(d)(1) of our Constitution (Count 7).

## **II. SPECIFIC OBJECTIONS**

1. Contrary to the error contained in the Board's brief, which was repeated in this Court's opinion, trial occurred on January 28, 2016, not March 28, 2016. (Board's brief paragraphs, 76 and 109) repeated in this Courts Opinion paragraphs 66, 98 and 128) This Court ignored our proposed findings of fact 61 and 101 which correctly stated the date of trial.

### **HOUDINI V. DONEGAL**

2. This Court ignored uncontradicted credible direct and circumstantial evidence that proved Judge Segal's granting of a continuance in this matter was consistent with her Court's and her own standard policy in similar circumstances. Judge Segal continued the case because of a valid reason advanced by counsel and not because of any request made by the former judge. Specifically, this Court ignored the uncontradicted testimony of defense witness David Denenberg, Esquire, who testified that Judge Segal's conduct was in accordance with the standard policy of the Municipal Court and the standard policy of Judge Segal (N.T 172, 173, 190. This Court also ignored the transcript of the Houdini proceeding (Exhibit 2 of the stipulated trial exhibits), and other uncontradicted evidence including Judge Segal's testimony which corroborated Mr. Denenberg's testimony.
3. Contrary to this Court's finding (paragraph 34), there was no evidence that Judge Segal "granted the continuance as requested." This conversation was recorded, played at trial, transcribed and quoted in this Court's opinion. The language and tone of conversation corroborates a finding that Judge Segal granted the continuance because Donegal's defense counsel just had been retained. It is beyond dispute that

the granting of a continuance under those circumstances was in accord with the standard policy of the Municipal Court and the standard policy of Judge Segal and not because of any “request” made by the former judge. Moreover, Judge Segal’s ruling, to mark the case “Must Be Tried,” was against the interests of Donegal and inconsistent with a finding that Judge Segal acted “as requested.”

4. Contrary to the conclusion reached at paragraph 65 of this Court’s Opinion, no credible evidence existed that Judge Segal did not reject the request of Waters for special consideration **because** she “was so upset about the article.” The mere fact that Judge Segal did not reject Waters’ request **and** that Judge Segal “was so upset about the article” is not proof that one caused the other. Nothing in this record supports a finding of causation.

#### **CITY OF PHILADELPHIA V. REXACH**

5. This Court ignored uncontradicted, credible direct and circumstantial evidence that proved Judge Segal’s rulings in initially denying the petition to open the default judgment and in later granting the petition for reconsideration in this matter were appropriate and correct and were in accordance with her Court’s and her standard policy in similar circumstances. Specifically, this Court ignored the uncontradicted testimony of defense witness David Denenberg, Esquire. Mr. Denenberg’s unrebutted expert testimony corroborated the testimony of Judge Segal. That testimony proved that both of Judge Segal’s rulings were in accordance with the standard policy of the Municipal Court and the standard policy of Judge Segal and were legally correct. Indeed a simple reading of each petition further demonstrated that each ruling was correct.

6. This Court erred in finding at paragraph 97a that Judge Segal told Agent Ruona that Waters “told her that Rexach was Judge Roca’s son.” In so finding, this Court failed to consider Judge Segal’s credible and uncontradicted testimony that she did not say that to Agent Ruona. Moreover, in so finding, this Court ignored Agent Ruona’s reluctant admission that his recollection of the conversation, years after the fact, simply was based upon FBI memoranda prepared days after his conversation with Judge Segal. In fact, some memoranda were written by other agents (N.T. 102-109). Significantly, this finding contradicts this Court’s factual finding 72 which acknowledged Judge Segal did not know Rexach was Judge Roca’s son.

#### **COMMONWEALTH V. KHOURY**

7. This Court erred in finding at paragraph 125(d) that Judge Segal told Agent Ruona that “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.” In so finding, this Court failed to consider Judge Segal’s credible and uncontradicted testimony that she did not say that to Agent Ruona (See N.T. 212). Moreover, this Court also ignored Agent Ruona’s admission that his recollection of the conversation, years after the fact, simply was based upon FBI memoranda prepared days after his conversation with Judge Segal and that some memoranda were written by other agents. Significantly although the Board had the burden of proof it never called Attorney Fuschino nor the prosecuting attorney to testify. A negative or adverse inference should have been drawn from that failure.
8. This Court erred in failing to adopt Judge Segal’s proposed findings of fact 88 and 89 and find as fact that Judge Segal’s decision to remand the case for a misdemeanor

trial was admittedly incorrect as a matter of law. However, Judge Segal's decision was based, not upon the *ex parte* communications, but upon her subjective belief, after reviewing the statute, that the issue of "otherwise eligible" was an element of the crime as argued by defense counsel. No contrary credible evidence on this issue was presented by the Board. Moreover this incorrect decision was a common mistake made by other Philadelphia Municipal Court judges, some with more experience than Judge Segal. In failing to make these findings, this Court improperly ignored the un rebutted testimony of Judge Charles Ehrlich, former Chief of the Municipal Court Unit of the Philadelphia District Attorney's Office and R. Patrick Link, Esquire, formerly a prosecutor in the Gun Violence Unit of the Philadelphia District Attorney's Office, as well Judge Segal's credible testimony.

#### **ADDITIONAL OBJECTIONS**

9. This Court erred in failing to consider and find that Judge Segal's reputation for honesty and hard work as a person, a lawyer and as a judicial officer was stellar. This Court ignored the credible and unchallenged testimony of seven (7) respected witnesses. This Court should have adopted Judge Segal's proposed findings of fact 115-123. Although character evidence is relevant on the issue of penalty, it similarly is relevant in the substantive case. It is a seminal principle of law that a person of good reputation is unlikely to act in a manner inconsistent with that reputation.
10. This Court erred in failing to find that Judge Segal timely reported her conduct to the Judicial Conduct Board. In so doing this Court ignored its own recent precedent in In re Eakin, No. 13 JD 2015. In Eakin, the respondent Justice's conduct occurred from 2008 until 2012. The Justice did not report his conduct until October, 2014,

two (2) years after the last offending act. This Court found that report to be timely. Instantly, the acts occurred in 2011 and 2012. Judge Segal selfreported 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 timely reported her conduct.

11. This Court erred in finding that Judge Segal violated Canon 3A(4) of the Old Code of Judicial Conduct. (Count 2) There is not clear and convincing evidence in this record to prove that Judge Segal **considered** the *ex parte* communications in making her decisions in any of the three above noted cases.
12. This Court erred in finding that Judge Segal violated Canon 3C(1) of the Old Code of Judicial Conduct. (Count 4) There is not clear and convincing evidence in this record to prove that Judge Segal had any personal bias or prejudice in favor of or against any party in these matters.
13. This Court erred in finding that Judge Segal violated the Administration of Justice Clause of Article V, §18(d)(1) of our Constitution (Count 6). We rely upon the extensive argument made in Judge Segal's post trial brief at pages 18-21.

14. This Court erred in finding that Judge Segal violated the Disrepute Clause of Article V §18(d)(1) of our Constitution (Count 7). We rely upon the extensive argument made in Judge Segal's post trial brief at pages 18-21.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SH', is written over a horizontal line.

STUART L. HAIMOWITZ  
Counsel for Judge Dawn A. Segal

DATE: July 29, 2016

**LAW OFFICES OF STUART L. HAIMOWITZ**

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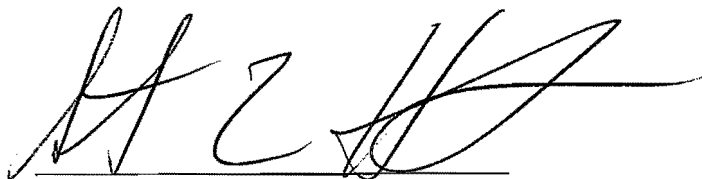
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**AFFIDAVIT OF SERVICE**

I hereby certify that in accordance with Rule 122 (E) I have this day served by e-mail and First Class Mail, 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 29<sup>th</sup> day of July, 2016



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**STUART L. HAIMOWITZ**  
Counsel for Judge Dawn A. Segal