

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

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IN RE:

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

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: No. 3 JD 15
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BEFORE: Honorable Jack A. Panella, P.J., Honorable Robert J. Colville, P.J.E., 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: SEPTEMBER 23, 2016

OPINION ON POST-VERDICT OBJECTIONS

Initially we note that the date of the trial in this matter was January 28, 2016.

Addressing the Objections of Respondent Segal, in the order they were presented we hold as follows.

Objection 1 is a general statement asserting the Court ignored uncontested facts and testimony and reached improper legal conclusions. Respondent Segal apparently intends this objection as a summary of her contentions and offers no specifics in support of this objection. In response to this broad, general objection we note that not all facts and law counsel seek to introduce into a case are substantial enough to be included in the Court's Opinion.

In this case we are presented with a judge (Respondent Segal) who engaged in *ex parte* contacts with another judge (Waters) to secretly favor one party over another in three separate cases. Multiple wiretapped calls

were intercepted by the FBI between the two wherein they discussed details concerning the favoritism and resultant rulings. Respondent Segal called Waters after each case to let him know she had ruled favorably for the litigant he backed. The transcripts of the intercepted calls and other evidence clearly make out the violations charged. Other facts become much less significant when the intercepted calls are considered.

Objection 2 asserts that Respondent Segal's action in continuing the *Houdini* case was proper and consistent with her usual policy on continuances. Before the *Houdini* case was even presented Respondent Segal engaged in *ex parte* calls concerning which party would be favored. Respondent Segal even called Waters back after the court appearance to assure him she was doing his bidding. Such blatantly improper conduct is absolutely inexcusable. The correct legal decision in the *Houdini* case would have been for Respondent Segal to recuse herself from it upon receiving an *ex parte* request to find in favor of one party. Every decision Respondent Segal made in the case after she decided not to recuse was tainted and improper. Whether a continuance was or was not warranted matters little when the decision making process was as tainted as it was here.

Objection 3 is to Finding of Fact 34 which states:

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

In Objection 3, Respondent Segal states that there is no evidence that the continuance in *Houdini* was granted as requested.

The Opinion, in Finding of Fact 34 merely states an uncontested fact. Defendant Kutlab's lawyer requested a continuance on September 30, 2011, which was opposed by plaintiff's counsel. The continuance was granted by Respondent Segal as requested.

That same day Respondent Segal telephonically reported back to Waters that she had granted the continuance as follows:

Former Judge Waters: Hey, how ya doing?

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

Former Judge Waters: Okay.

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

Former Judge Waters: Okay.

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

Former Judge Waters: Okay, cool.

Judge Segal: Alright . . .

Former Judge Waters: Alright.

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

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

Judge Segal: All for you. Anything. Alright. Well, can we meet for a drink or something?

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

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

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

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

Former Judge Waters: Alright. Bye-bye.

Judge Segal: Bye-bye.

(Intercepted call of September 30, 2011.)

(Emphasis added).

Respondent Segal's Objection 3 is without merit. She granted the continuance motion as requested and took credit for it in her subsequent *ex parte* telephone call with Waters.

In Objection 4, Respondent Segal denies she went along with Waters' request for "special consideration" in the *Houdini case* because she was upset about a newspaper article suggesting the Democrat Party might not back her for retention. This objection is meritless. Respondent Segal's testimony in the trial transcript at page 187, lines 14-18, is that, in response to Waters' call requesting special consideration:

I didn't say to him, why are you calling me? Get out of my face, this is wrong. I'm going to report you immediately because I was just so upset about that article.

Respondent Segal's own words undermine her Objection 4.

In Objection 5, Respondent Segal says that her ruling in the *Rexach* case granting reconsideration of a petition to open default judgment was legally correct. Whether the ruling was arguably correct or not is of little

importance to the charge here. The ruling occurred after improper *ex parte* contacts, which is what we found. To argue that a ruling so tainted by *ex parte* contacts is in some way correct misses the point. Respondent Segal should have recused immediately upon receiving this *ex parte* request and all her actions in the *Rexach* case after she failed to do so are improper.

In Objection 6, Respondent Segal alleges she did not say she told FBI Agent Ruona that Waters told her that Rexach was Judge Roca's son. Respondent Segal says the Opinion is contradictory in finding she did not know Rexach was Roca's son and then stating otherwise later.

Respondent Segal incorrectly states what our Opinion says. The Opinion states that at the moment Waters first called Respondent Segal, she did not know Rexach was Roca's son. Our Opinion goes on to state that FBI Agent Ruona testified that Respondent Segal told him "maybe Waters had [later] met her in person in a robing room and told her Rexach was Judge Roca's son." Paragraph 97(a) of Findings of Fact.

Waters did not come to Respondent Segal's robing room until well past the time of his first *ex parte* phone call to Respondent Segal. Respondent Segal did not know Rexach was Roca's son initially but was so informed later as the Opinion states. Objection 6 is of little moment in any event. Respondent Segal accepted and made numerous *ex parte* contacts concerning the case and even reported her compliant ruling to Waters.

In Objection 7, Respondent Segal alleges she did not state to Agent Ruona that she was more open to the argument of Defense Attorney Fuschino in the *Khoury* case because of the Attorney's relationship with

Waters as stated in Finding of Fact 125(d). Agent Ruona testified, consistently with Finding of Fact 125(d) in the trial transcript at 87, lines 19-25. Additionally, the fact that Attorney Fuschino was representing Defendant Khoury is mentioned repeatedly by Waters in his intercepted July 23, 2012, call to Respondent Segal. The Court found Agent Ruona's version credible.

In Objection 8, Respondent Segal argues that the Court should have found her favorable decision for Khoury was the result of an innocent mistake of law rather than because of *ex parte* contacts from Waters.

The Court in its Opinion made no finding as to why Respondent Segal ruled in favor of Khoury, only that she accepted *ex parte* calls from Waters asking her to do so and then reported back to him that she had ruled as he asked. Whether Respondent Segal believed she was ruling correctly is not the issue. Respondent Segal's repeated improper *ex parte* contacts, and her assurances to Waters that she would do his bidding are what lead to the violations here.

In Objection 9, Respondent Segal argues, in summary, that evidence of her good reputation should have been included as factual reason to find favorably for her on liability on the charges considered here. In reply, this Court finds that the wiretap evidence undermines any possible finding of innocence. Respondent Segal's own words on the intercepted telephone calls are the strongest evidence against her. Extrinsic evidence concerning Respondent Segal's reputation was considered here on liability and also will be of interest in deciding a sanction. In determining Respondent Segal's liability on the charges, her own words on the wiretaps speak much more

convincingly than any claim that she generally has positive traits. The character testimony remains in evidence to be considered concerning the appropriate sanction.

In Objection 10, Respondent Segal alleges that the Court erred by failing to find that she timely reported her many *ex parte* contacts with Waters.

As set forth in the Opinion, Respondent Segal's alleged self-reporting only occurred after she was confronted by the FBI and months after the *ex parte* conversations occurred. Segal did not promptly self-report. The time to self-report was immediately after the improper *ex parte* contacts occurred, not after she found out that the FBI knew about it. Claiming to have promptly self-reported after being confronted by the FBI is meritless.

Objection 11 is that Respondent Segal did not violate Old Code Canon 3A(4) in that she did not "consider" the repeated *ex parte* calls to and from Waters. By any rational definition of "consider," Respondent Segal did consider those calls. She engaged in the calls repeatedly and assured Waters of her compliance with his wishes while ruling favorably for his associates every time. There is unquestionably clear and convincing evidence that Respondent Segal considered Walters' requests.

In Objection 12, Respondent Segal maintains she did not violate Old Code Canon 3C(1) by exhibiting personal bias or prejudice against a party.

Taking and making repeated *ex parte* phone calls favorable to a party and ruling in favor of that party with no notice to opposing counsel or anyone

else except the one engaged in collusion with her is unquestionably exhibiting bias against the aggrieved party. Objection 12 is meritless.

Objection 13 is that Respondent Segal did not violate the Administration of Justice section of the Constitution. Again, the repeated *ex parte* calls and assurances of compliance made to Waters are clearly an interference with the administration of justice. Respondent Segal's actions in hearing three separate cases where she has received *ex parte* requests, not disclosing such requests to the victimized party and then conducting proceedings where that party had no idea any of this had occurred is clearly interference with the administration of justice particularly when coupled with Respondent Segal's calls to Waters assuring him of her compliance with his improper requests for favoritism, thereby encouraging him to make more such requests.

Objection 14 is that Respondent Segal did not cause disrepute to the judiciary in violation of the Constitution. Respondent Segal clearly caused considerable disrepute to the judiciary by the repeated bad acts she committed which we describe in the Opinion. A judge repeatedly agreeing with another judge to find in favor of a party on three separate occasions and assuring him of her compliance unquestionably defies "the reasonable expectations of the public of a judicial officer's conduct." *In re Carney*, 79 A.3d 490, 494 (Pa. 2013).

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ORDER

AND NOW, this 23rd day of September, 2016, it is hereby ORDERED that the Post-Verdict Objections of Respondent Segal are DENIED and DISMISSED.

PER CURIAM