

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

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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 :

PRE HEARING BRIEF ON SANCTIONS

Judge Dawn A. Segal, by and through her attorney, Stuart L. Haimowitz, Esquire, files this Pre Hearing Brief on Sanctions.

This Court has issued its findings of fact and conclusions of law. The matter is now before this Court on the issue of sanctions.

We respectfully ask this Court to accept and find credible the character testimony presented at the prior hearing. Specifically we ask this Court to find as follows:

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."

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.”

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.”

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.”

Retired Supreme Court 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.

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.”

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.”

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.”

In addition, for the purpose of imposing an appropriate sanction, we respectfully ask this Court to find that Judge Segal consistently has expressed remorse for her conduct, she self reported her conduct, fully cooperated with the federal criminal investigation without seeking any legal protection and truthfully answered the questions posed to her, voluntarily appeared before a grand jury without seeking any legal protection and truthfully answered the questions posed to her, fully cooperated with the Judicial Conduct Board's investigation and truthfully answered all questions posed to her.

In addition, for the purpose of imposing an appropriate sanction, we respectfully ask this Court to find that Judge Segal never intended to violate any canon, rule, or constitutional provision

In addition, for the purpose of imposing an appropriate sanction, we respectfully ask this Court to find that as a Municipal Court Judge, Judge Segal volunteered to assume additional work that many of her colleagues declined 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.

In addition, for the purpose of imposing an appropriate sanction, we respectfully ask this Court to find that 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. 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.

In determining an appropriate sanction, this Court has held that cases must be decided on a case by case basis. In re Trkula, 699 A.2d. 3,7 (Pa. Ct. Jud. Disc. 1997); In re Cicchetti, 697 A.2d. 297, 313 (Pa. Ct. Jud. Disc. 1997), *aff'd* 560 Pa. 183, 206, 743 A.2d. 431,444 (2000). In In re Toczdyłowski, 853 A.2d. 24, (Pa. Ct. Jud. Disc. 2004) this Court identified ten (10) “nonexclusive” factors that it would consider in determining an appropriate sanction:

- (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct;
- (b) the nature, extent and frequency of occurrence of the acts of misconduct;
- © whether the conduct occurred in or out of the courtroom;

- (d) whether the misconduct occurred in the judge's official capacity or in his or her private life;
- (e) whether the judge has acknowledged or recognized that the acts occurred;
- (f) whether the judge has evidenced an effort to change or modify his or her conduct;
- (g) the length of service on the bench;
- (h) whether there have been prior complaints about this judge;
- (I) the effect the misconduct has upon the integrity of and respect for the judiciary; and
- (j) the extent to which the judge exploited his position to satisfy his personal desires.

It is undisputed and uncontradicted that Judge Segal has acknowledged that the charged acts occurred and she has candidly acknowledged the wrongfulness of her failures to “reject report and recuse.” She first did so when she self reported her conduct. She did so when she cooperated with the federal investigation, without seeking any protection. She did so when she testified before the grand jury without seeking immunity. She did so when she cooperated with the Board’s investigation. She did so when she testified before this Court. Although Judge Segal suggested that as a matter of law her wrongful conduct did not rise to the level of violating the “disrepute” clause or the “prejudicial to the administration of justice” clause based upon the case law, she never challenged her wrongful conduct nor denied the **acts** charged.

It also is undisputed and uncontradicted that in her five years on the bench prior to her temporary suspension, there were no prior complaints about Judge Segal. To the contrary, the undisputed and uncontradicted evidence demonstrated that Judge Segal enjoyed an outstanding reputation for being a hard working, competent, diligent and ethical judge. There has been no

allegation raised in this investigation that Judge Segal's decisions occurred because of this improper *ex parte* contact.

The Pennsylvania Supreme Court has imposed a sanction in a case involving *ex parte* communication. In In re Larson, 616 A.2d. 529 (Pa. 1992), Justice Larson engaged in *ex parte* communication with Judge Ross, who sat on the Court of Common Pleas of Allegheny County. Judge Ross was presiding over a matter in which a friend of Judge Larson was a litigant. The evidence demonstrated and that Court found Justice Larson's purpose in engaging in the improper conduct was to seek favorable treatment for his friend. Despite the fact that Judge Larson's conduct, in which he intentionally sought favorable treatment in a pending matter, was substantially more egregious than the conduct of Judge Segal, that Court sanctioned Justice Larson with a public reprimand.

This Court also imposed a sanction in a case involving *ex parte* communication. In In re Dagher, 657 A.2d. 1032 (Pa. Ct. Jud. Disc. 1995) a judge participated in an *ex parte* conversation with a divorce litigant who had a pending equitable distribution matter before the judge. The litigant offered and the judge accepted 50 yard line tickets to an upcoming Penn State football game. This Court specifically found the litigant's purpose in making the offer was to seek favorable treatment in the litigation. In addition this Court also found the judge neglected six unrelated cases. For this egregious conduct, a seven (7) day suspension without pay was imposed.

Recently, this Court, in In re Dawn Vann, 1J.D. 15¹ (December 23, 2015) addressed egregious judicial misconduct. The misconduct included *ex parte* communications. This Court

¹This Court's decision and order have yet to be published.

found Judge Vann interfered with a police investigation into a matter involving a close friend. After an arrest was made and sent to her courtroom for the preliminary arraignment she failed to report her obvious conflict of interest and request recusal, as required by rule. Instead, she attempted to direct the case to a specific magistrate in violation of explicit rules. She repeatedly attempted to influence other judges to whom the case was assigned. She engaged in numerous *ex parte* conversations, the results of which affected the outcome of the case. Arrests were made and charges were issued on less than probable cause². Judge Vann signed the arrest paperwork which included certifying the criminal complaints. A civil suit alleging false arrest eventually followed. As this Court found, the civil suit concluded after Defendant, Delaware County paid an undisclosed sum to both individuals arrested. Judge Vann was suspended for six months without pay with additional sanctions involving supervision.

Although we are unaware of any other cases in which this Court sanctioned a judge specifically on the basis of an *ex parte* communication, In re Singletary, 967 A.2d. 1094 (Pa. Ct. Jud. Disc. 2009) touched upon similar issues. That case concerned a candidate for judicial office who spoke before a group of motorcyclists. In his speech the candidate solicited campaign contributions and strongly suggested to the assembled group that donors to his campaign would receive favorable considerations. The candidate was elected. This Court imposed a public reprimand and two (2) years probation for this egregious conduct.

²Two arrests were made. The charges against each defendant included felony Aggravated Assault, various weapons offenses, and Interfering with the Custody of a Minor. Judge Vann's friend was the complainant. As a result of the serious charges, one defendant, the friend's estranged boyfriend remained incarcerated on \$250,000 bail. At a preliminary hearing the magistrate dismissed all charges against one defendant. The magistrate dismissed the serious charges including the charges noted above against the other defendant, the estranged boyfriend. His bail was reduced to \$5,000

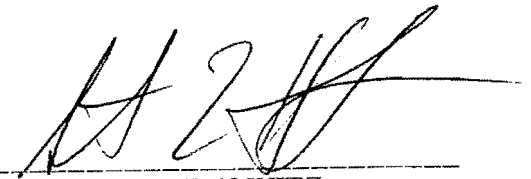
Judge Segal currently is serving a temporary suspension without pay imposed more than nine (9) months ago. In our Brief in Support of Proposed Findings of Fact and Conclusions of Law, we documented many cases involving serious violations of the Rules and Canons. Much of the conduct was substantially more egregious than Judge Segal's conduct instantly and the respondent Judge received sanctions less severe than the sanction Judge Segal currently is undergoing. For example, the judge in In re DeLeon, 967, A.2d. 460 (Pa. Ct. Jud. Disc. 2009) met a social acquaintance who complained to the judge about a neighbor. In response, the judge, in an attempt to benefit his acquaintance, abused his judicial office and issued a stay away order against the acquaintance's neighbor despite the fact that there was nothing pending before the court. For that egregious conduct, the judge received a three (3) month suspension without pay.

In In re Berry, 979 A.2d. 991 (Pa. Ct. Jud. Disc. 2009) the judge over a fourteen (14) year period used his judicial office, resources and support staff to run a private real estate business. A four (4) month suspension without pay was imposed for that lengthy continuing misconduct.

In In re Hamilton, 932 A.2d. 1030 (Pa. Ct. Jud. Disc. 2007), the offending judge became extremely intoxicated at a public event, engaged in a loud altercation with a local police chief and physically attacked the chief. Like the instant matter, that case, too, received significant local media attention. After a sanctions hearing, the offending judge received a nine (9) month suspension without pay. See In re Hamilton, 932 A.2d. 1038 (Pa. Ct. Jud. Disc. 2007) (Mem Order).

In summary, we respectfully ask this Court to impose a suspension without pay for a period of months retroactive to February 2, 2016, the date of the temporary suspension. The sanction would exceed the sanctions imposed in the cases cited above. Each of the cited cases contains egregious elements not found in this case, including seeking to influence litigation, causing arrests on less than probable cause, seeking votes in return for favorable treatment, theft of services, physical violence, and accepting gifts from a litigant in a matter before the judge. Many of these cases also involve failures to report and/or recuse. At least three of cases involve *ex parte* conversations. Judge Segal is an honest and good judge. The requested sanction is reflective of the conduct and its impact upon our judicial system, is consistent with case law, and acknowledges the complete person who stands before this Court.

Respectfully submitted,



STUART L. HAIMOWITZ

Counsel for Judge Dawn A. Segal

SLH:tfo

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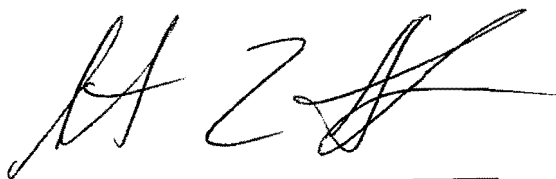
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AFFIDAVIT OF SERVICE

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 17th day of November, 2016



STUART L. HAIMOWITZ
Counsel for Judge Dawn A. Segal