



Press Release

December 11, 2014

TO: Media/Press

FROM: Judicial Conduct Board

**SUBJECT: Kelly S. Ballentine
Magisterial District Judge
Magisterial District Court 02-2-01
Lancaster County
7 JD 2013**

Harrisburg. Today, the Court of Judicial Discipline ordered a hearing on the Judicial Conduct Board's Petition to Revoke Probation in a matter involving Lancaster County Magisterial District Judge Kelly S. Ballentine.

On June 10, 2013, the Court of Judicial Discipline sanctioned Judge Ballentine for judicial misconduct after finding that she had brought the judicial office into disrepute and prejudiced the proper administration of justice. As part of its sanction, the Court placed Judge Ballentine on probation from June 1, 2013 through December 31, 2014.

On December 4, 2014, the Board filed its Petition to Revoke Probation alleging that Judge Ballentine had violated the terms of her probation by failing to timely file individual income tax returns during the probationary period. Under the Court's procedural rules, the Board has the burden of proving by clear and convincing evidence that the judge failed to comply with the terms of probation.

The Court has scheduled a hearing on the Board's petition for Thursday, January 22, 2015 at 10:00 a.m. in Commonwealth Court Courtroom 5001, 5th Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg. The hearing is a public proceeding at which the judge has the right to counsel and the right to examine and cross-examine witnesses, with all testimony being presented under oath.

Counsel

Board: Deputy Counsel Elizabeth A. Flaherty

**Judge Ballentine: Heidi Fisher Eakin, Esquire
Samuel Stretton, Esquire**

Contact

Robert A. Graci, Chief Counsel

The Board's Petition and the Court's Order are attached.

For more information about the Judicial Conduct Board, please visit our website at www.jcbpa.org.

END

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

RECEIVED AND FILED
JUL 11 2014
2014 DEC 11 A 9 53

IN RE:

Kelly S. Ballentine
Magisterial District Judge
District Court 02-2-01
Second Judicial District
Lancaster County

.....
: No. 7 JD 13
:

ORDER

AND NOW, this 11th day of December, 2014, a hearing on the Petition to Revoke Probation shall commence on January 22, 2015 at 10 a.m. in Commonwealth Court Courtroom 5001, 5th Floor, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Harrisburg, Pennsylvania.

The Judicial Conduct Board and the Respondent shall each file on or before January 15, 2015 a list of such witnesses as either party may intend to present for testimony at that hearing, and shall serve a copy of said list upon the other party.

PER CURIAM

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

RECEIVED
JUL 11 2014
CLERK OF COURT
JUDICIAL DISCIPLINE
2014 JUN -11 AM 11:21

In re:

Kelly S. Ballentine :
Magisterial District Judge :
Magisterial District 02-2-01 : 7 JD 2013
Lancaster County :

PETITION TO REVOKE PROBATION

AND NOW, this 4th day of December, 2014, comes the Judicial Conduct Board of Pennsylvania (Board) and files this Petition to Revoke Probation against the Honorable Kelly S. Ballentine. Pursuant to C.J.D.R.P. 505(B), the Board requests that the Court of Judicial Discipline (CJD) schedule a hearing to determine whether Magisterial District Judge (MDJ) Ballentine violated the terms of her probation and whether the Court should modify the sanction previously imposed for her conduct of dismissing her own traffic citations.

1. By its May 28, 2013 Order, this Court granted the Board's February 11, 2013 Petition for Suspension Without Pay. The Order provided that the suspension of MDJ Ballentine begin on February 11, 2013 and required her to repay the salary she received during her term of suspension.

2. By its June 10, 2013 Order, this Court imposed sanctions upon MDJ Ballentine. Those sanctions included suspension from office without pay from the aforementioned start date of February 11, 2013 through May 31, 2013, followed by a consecutive term of probation to run from June 1, 2013 to December 31, 2014. The conditions of probation included a salary repayment schedule.

3. In its June 10, 2013 Order, the Court ordered MDJ Ballentine to report to Board Chief Counsel or his designee, on a monthly basis and directed the Board to file a monthly written probation report with the Court.

4. In its monthly probation report, the Board must advise the Court whether MDJ Ballentine is in compliance with the conditions of probation and with the Rules Governing Standards of Conduct of Magisterial District Judges and Article V of the Pennsylvania Constitution.

5. The Board filed probation reports with the Court on a monthly basis from July 8, 2013 through January 8, 2014 at which time Chief Counsel decreased the frequency of the probation reporting meetings to every other month. Thereafter, the Board submitted a report to the Court in March, May, July, September and October 2014. Chief Counsel cancelled the November, 2014 probation reporting meeting because of the Board's decision to file the instant Petition.

6. On June 20, 2013, the Board provided MDJ Ballentine with "Rules and Conditions of Probation" (Board Exhibit 1) which she executed on July 8, 2013.

7. The "Rules and Conditions of Probation" provide:

3. You shall comply with the mandates of Article V, Sections 17 and 18 of the Pennsylvania Constitution pertaining to conduct of judicial officers and the Pennsylvania Rules Governing Standards of Conduct of Magisterial District Judges;

4. Based on your conduct of dismissing your own traffic citations, it is particularly important that you abide by the following rules: 1. You shall not engage in any activity prohibited by law; 2. You shall comply with the law in all activities which implicate the judicial decision making process; 3. You shall not engage in any activity or behavior, on or off the bench which would impair or prejudice the proper administration of justice; and 4. You shall not engage in any conduct, on or off the bench, which would bring disrepute upon the judiciary.

8. Prior to and during the pendency of MDJ Ballentine's term of probation, the Board investigated a complaint that MDJ Ballentine engaged in judicial misconduct in the operation of a retail business, Walk-In-Style Fashion Footwear, 356 North Queen Street, Lancaster, Pennsylvania, that she owned and operated from 2009 to 2014.

9. On January 25, 2012, as a result of MDJ Ballentine's failure to pay sales taxes due and owing on the sale of taxable goods at Walk-In-Style Fashion Footwear, the Pennsylvania Department of Revenue provided notice to MDJ Ballentine that her license to sell taxable goods was revoked as of that date.

10. The License Revocation Notice advised MDJ Ballentine that she was subject to a criminal citation if she sold taxable goods without a sales tax license.

11. On May 9, 2012, Al Forlizzi, District Administrator of the Bureau of Collections and Taxpayer Services, sent a letter to MDJ Ballentine regarding the revocation of her Sales, Use and Hotel Occupancy Tax license and ordered her to surrender the license to the PA Department of Revenue. The letter notified MDJ Ballentine that she was prohibited from maintaining a place of business in Pennsylvania for the purpose of selling taxable goods until the revocation was rescinded and her license restored.

12. On September 25, 2012, the PA Department of Revenue issued a Non-Traffic Citation to MDJ Ballentine for a summary offense violation of 72 P.S. § 7208(c) which prohibits the offering of taxable goods for sale without possession of a valid sales tax license.

13. On January 31, 2013, MDJ Ballentine appeared *pro se* at a Summary Trial before the Honorable Paula P. Correal who denied MDJ Ballentine's request for a continuance. *Commonwealth v. Kelly S. Ballentine*, Docket No. MJ-02202-NT-0000963-2012.

14. Following trial, Sr. MDJ Correal adjudicated MDJ Ballentine guilty of the aforementioned summary offense and sentenced her to fines and costs in the amount of \$369.45.

15. On February 1, 2013, MDJ Ballentine filed Notice of Summary Appeal in the Court of Common Pleas of Lancaster County. *Commonwealth v. Kelly S. Ballentine*, Docket No. CP-36-SA-0000023-2013.

16. On October 25, 2013, while represented by Attorney Jerome A. Taylor, MDJ Ballentine withdrew her appeal.

17. On October 25, 2013, the Honorable Margaret Miller of the Court of Common Pleas of Lancaster County adjudicated MDJ Ballentine guilty of the summary offense of conducting the sale of taxable goods at Walk-In-Style Fashion Footwear without a valid sales license and sentenced her to pay fines and costs.

18. While investigating the complaint of misconduct related to the sales tax case, by letter dated August 11, 2014, the Board inquired of MDJ Ballentine whether she filed her individual federal, state and local tax returns for tax years 2009, 2010 and 2011.

19. On August 25, 2014, through her attorney, Samuel C. Stretton, Esquire, MDJ Ballentine informed the Board that she failed to timely submit her individual federal, state and local tax returns for tax years 2009, 2010, 2011, 2012 and 2013.

20. In late August, 2014, MDJ Ballentine first contacted her tax preparer, Juan Galarza of Galarza Income Tax Service, 727 Prince Street, Lancaster, PA 17603 to request that he prepare and file her federal, state and local individual income tax returns for tax years 2009, 2010, 2011, 2012 and 2013.

21. MDJ Ballentine's tax records demonstrate that in 2010, 2011, 2012 and 2013, MDJ Ballentine timely requested that her tax preparer, Mr. Galarza, file IRS Form No. 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for tax years 2009, 2010, 2011 and 2012.

22. In April of 2010, 2011, 2012 and 2013, Mr. Galarza timely filed IRS Form No. 4868 for six month extensions of time to file MDJ Ballentine's federal individual income tax returns for tax years 2009, 2010, 2011 and 2012.

23. By timely filing IRS Form 4868, the time to file MDJ Ballentine's federal individual income tax returns was extended six months from the April due dates to the new October due dates for tax years 2009, 2010, 2011 and 2012.

24. By her timely filing of IRS Form 4868, the Pennsylvania Department of Revenue automatically granted MDJ Ballentine six month extensions of time to file her state income tax returns for tax years 2009, 2010, 2011 and 2012.

25. Despite the six month extensions of time to file the tax returns, MDJ Ballentine failed to timely file her federal, state and local individual income tax returns for tax years 2009, 2010, 2011 and 2012.

26. On or before April 15, 2014, the statutory deadline for the filing of U.S. Individual Income Tax returns or IRS Form 4868 seeking an extension of the deadline, MDJ Ballentine did not contact Mr. Galarza to request that he file IRS Form 4868 for an extension of time to file her 2013 federal individual income tax return.

27. On or before April 15, 2014, Mr. Galarza did not file IRS Form 4868 to request a six month extension of time to file MDJ Ballentine's 2013 individual federal income tax returns, nor submit to the Pennsylvania Department of Revenue a request for an extension of time to file MDJ Ballentine's individual state income tax returns.

28. On August 28 and 29, 2014, MDJ Ballentine delivered her tax records, in part, for tax years 2009, 2010, 2011, 2012 and 2013 to Mr. Galarza.

29. Prior to a September 27, 2014 appointment with Mr. Galarza, MDJ Ballentine delivered additional tax records for tax years 2009, 2010, 2011, 2012 and 2013 to Galarza Income Tax Service.

30. On September 27, 2014, Mr. Galarza met with MDJ Ballentine and prepared her tax returns for tax years 2009, 2010 and 2011.

31. On September 27, 2014, MDJ Ballentine signed and dated her 2009, 2010 and 2011 federal, state and local individual income tax returns, prepared by Mr. Galarza.

32. On October 15, 2014, Mr. Galarza prepared MDJ Ballentine's 2012 and 2013 federal, state and local individual income tax returns.

33. On October 15, 2014, MDJ Ballentine signed and dated her 2012 and 2013 federal, state and local individual income tax returns as prepared by Mr. Galarza.

34. According to IRS Account Transcripts dated October 31, 2014, the IRS received MDJ Ballentine's 2010 federal tax return on October 28, 2014 and received her 2011 federal tax return on October 8, 2014. The 2009, 2012 and 2013 tax returns were not yet listed as received by the IRS.

35. The Pennsylvania Department of Revenue deems the postmark date on tax returns as the filed date and lists MDJ Ballentine's tax returns as filed on the following dates:

2009	Not received
2010	October 4, 2014
2011	October 9, 2014
2012	October 20, 2014
2013	October 20, 2014

36. MDJ Ballentine timely paid taxes that she owed for tax years 2009, 2010, 2011, 2012 and 2013 to the federal, state and local governments solely through the withholding of tax moneys from her paycheck by the Administrative Office of Pennsylvania Courts.

37. During her CJD probation period beginning on June 1, 2013 and scheduled to end on December 31, 2014, MDJ Ballentine failed to timely file her federal, state and local individual income tax returns for tax years 2009, 2010, 2011, 2012 and 2013 until after August 11, 2014 when the Board formally questioned her on the subject.

38. Since October 30, 2013, judges, including magisterial district judges, are required to comply with the law pursuant to Old Canon 2A and Rule 2A of the Rules Governing Standards of Conduct of Magisterial District Judges, whether or not their conduct implicates the judicial decision making process. *In re Carney*, 79 A.3d 490 (Pa. 2013).

39. Under both the Internal Revenue and the Pennsylvania Tax Reform Code, the failure to file a tax return is a criminal act, graded as a misdemeanor.

40. The Internal Revenue Code at 26 U.S.C.A. § 7203 provides:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year or both, together with the costs of prosecution.

41. The Pennsylvania Tax Reform Code of 1971 at 72 PS. § 7535(c) provides:

Any person required under this article to pay any tax or to make a return, keep any records or supply any information, who willfully fails to pay such tax or make such return, keep such records or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall, upon conviction, be sentenced to pay a fine not exceeding five thousand dollars (\$5,000), or to undergo imprisonment not exceeding two years, or both.

42. Under the federal and state tax laws, "willfully" means with knowledge.

43. MDJ Ballentine knew that federal tax law required her to timely file her federal individual income tax returns for tax years 2009, 2010, 2011, 2012 and 2013.

44. By her conduct of failing to file her federal individual income tax returns for tax years 2009, 2010, 2011, 2012 and 2013, MDJ Ballentine willfully failed to comply with the Internal Revenue Code at 26 USCA § 7203 in each of the five years when she was required to, yet failed to file a federal individual income tax return.

45. MDJ Ballentine knew that Pennsylvania law required her to timely file her state individual income tax returns for tax years 2009, 2010, 2011, 2012 and 2013.

46. By her conduct of failing to timely file her Pennsylvania individual income tax returns for tax years 2009, 2010, 2011, 2012, and 2013, MDJ Ballentine willfully failed to comply with the Pennsylvania Tax Reform Code at 72 P.S. § 7353 in each of the five years when she was required to, yet failed to file a Pennsylvania individual income tax return.

47. By her conduct of failing to file her 2012 federal, state and local tax returns by the extended due date of October 15, 2013, MDJ Ballentine failed to comply with the law while on probation in 2013 and thereby violated Paragraph Nos. 3 and 4 of the "Rules and Conditions of Probation" and Article V of the Pennsylvania Constitution pertaining to conduct of judicial officers.

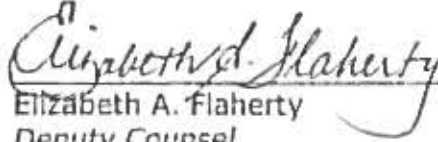
48. By her conduct of failing to file her 2013 federal, state and local tax returns by the due date of April 15, 2014, MDJ Ballentine failed to comply with the law while on probation in 2014 and thereby violated Paragraph Nos. 3 and 4 of the "Rules and Conditions of Probation," Article V of the Pennsylvania Constitution pertaining to conduct of judicial officers and Rule 2A of the Old Rules Governing Standards of Conduct of Magisterial District Judges, effective through November 30, 2014.

WHEREFORE, the Judicial Conduct Board of Pennsylvania requests that this Court schedule a hearing pursuant to C.J.D.R.P. No. 505(B) to determine whether MDJ Ballentine violated the terms of her probation and is subject to reconsideration of the original sanction.

Respectfully submitted,

Robert A. Graci
Chief Counsel

Date: December 4, 2014

By: 
Elizabeth A. Flaherty
Deputy Counsel
Supreme Court ID: 205575

Judicial Conduct Board
601 Commonwealth Avenue
P.O. Box 62525
Harrisburg, PA 17106

In re Kelly S. Ballentine, 7 JD 2013

RULES AND CONDITIONS OF PROBATION

According to the June 10, 2013 Order of the Court of Judicial Discipline, your interim suspension without pay ended on May 31, 2013. On June 1, 2013, your term of probation began and shall continue until December 31, 2014. The Court designated the Judicial Conduct Board ("Board") to supervise your probation. You are hereby subject to the following rules and conditions during your probationary period:

1. You shall report in person to Chief Counsel for the Board or his designee, on a monthly basis as directed in the enclosed schedule of Probation Reporting Dates. On July 8, 2013 you must appear for your initial probation reporting meeting at 10:00 a.m. at the Harrisburg office of the Judicial Conduct Board. Your final probation reporting meeting is scheduled for December 31, 2014. You shall also abide by any written or verbal instructions issued to you by the Board and respond promptly to any communication from the Board. If for any reason, you are unable to attend a scheduled meeting with Chief Counsel or his designee, you shall promptly notify the Board in writing of your request to reschedule and the reasons for your request.
2. You shall strictly comply with the condition of probation set forth in the Court's June 10, 2013 Order that you repay compensation paid to you during your February 11, 2013 through May 31, 2013 Interim suspension without pay as follows:

\$5,000 on or before July 1, 2013

\$1,296.93 on or before August 1, 2013

\$1,000 monthly thereafter, payable on the first day of each month until August, 2014.

According to AOPC, it would be to your advantage to repay the sum total of \$18,296.93 in 2013 in order to avoid tax implications. An accelerated repayment plan would be deemed in compliance with the Court Order.



3. You shall comply with the mandates of Article V, Sections 17 and 18 of the Pennsylvania Constitution pertaining to the conduct of judicial officers and the Pennsylvania Rules Governing Standards of Conduct of Magisterial District Judges.
4. Based on your past conduct of dismissing your own traffic citations, it is particularly important that you abide by the following rules: 1. You shall not engage in any activity prohibited by law; 2. You shall comply with the law in all activities which implicate the judicial decision-making process; 3. You shall not engage in any activity or behavior, on or off the bench, which would impair or prejudice the proper administration of justice; and 4. You shall not engage in any conduct, on or off the bench, which would bring disrepute upon the judiciary.
5. You shall not directly or indirectly retaliate, or take adverse administrative action against any member of your office staff as a reprisal for his or her actions, in cooperation with the Board or the Attorney General's Office, regarding prior investigations or prosecutions of your conduct. Retaliatory conduct against office staff shall include, but is not limited to, the following: (1) firing, demoting, or reassignment of duties; (2) petty conduct that contributes to an unfriendly, unprofessional, non-collegial work environment; (3) conduct that serves to ostracize staff members; (4) conduct that creates unjustified onerous working conditions; or (5) conduct that is contrary to relevant federal or state employment law.
6. You shall obey all administrative directives issued by the President Judge of Lancaster County or his designee.
7. You shall promptly notify the Board if you change your address.

CERTIFICATION STATEMENT

I hereby certify that I received and read the above Rules and Conditions of Probation, that I understand them, and that I shall fully comply with such Rules and Conditions of Probation. I further acknowledge that I received a copy of the schedule of the Probation Reporting Dates.

DATE: 7/8/13


Kelly S. Ballentine
Magisterial District Judge

In re Kelly S. Ballentine, 7 JD 2013

SCHEDULE OF PROBATION REPORTING DATES

Location: Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 3500
Harrisburg, PA 17106

Start Date: July 8, 2013

End Date: December 31, 2014

Time: 10:00 AM

Method: In person

July 8, 2013	April 2, 2014
August 7, 2013	May 7, 2014
September 4, 2013	June 4, 2014
October 2, 2013	July 2, 2014
November 6, 2013	August 6, 2014
December 4, 2013	September 3, 2014
January 8, 2014	October 1, 2014
February 5, 2014	November 5, 2014
March 5, 2014	December 31, 2014

Generally, the probation reporting meetings are scheduled for the first Wednesday of each month with the following exceptions: Monday, July 8, 2013, Wednesday, January 8, 2014 and Wednesday, December 31, 2014.

COMMONWEALTH OF PENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

IN RE:

Kelly S. Ballentine	:	
Magisterial District Judge	:	
Magisterial District 02-2-01	:	7 JD 13
Lancaster County	:	

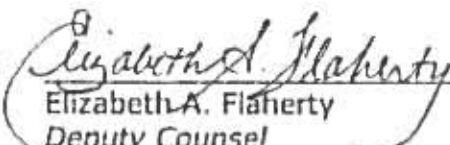
VERIFICATION

I, Elizabeth A. Flaherty, Assistant Counsel to the Judicial Conduct Board, verify that facts and averments contained in the Judicial Conduct Board's Petition to Revoke Probation are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904, relating to unsworn falsification to authorities.

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

DATE: December 4, 2014

By: 
Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 3500
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911

COMMONWEALTH OF ENNSYLVANIA
COURT OF JUDICIAL DISCIPLINE

In re:

Kelly S. Ballentine	:	
Magisterial District Judge	:	
Magisterial District 02-2-01	:	7 JD 2013
Lancaster County	:	

PROOF OF SERVICE

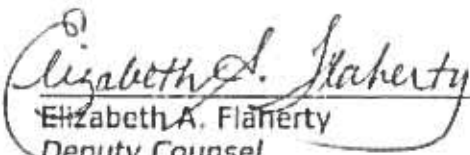
In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on or about December 4, 2014, a copy of the Board's Petition to Revoke Probation was sent by first class mail to counsel for Magisterial District Judge Kelly Ballentine:

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381

Respectfully submitted,

ROBERT A. GRACI
Chief Counsel

December 4, 2014

By: 
Elizabeth A. Flaherty
Deputy Counsel
Pa. Supreme Court ID No. 205575

Judicial Conduct Board
601 Commonwealth Avenue
P.O. Box 62525
Harrisburg, PA 17106
(717) 234-7911