Judicial Conduct Board
Commonwealth of Pennsylvania
Joseph A. Massa, Jr., Chief Counsel
717-234-7911

Press Release

March 9, 2009

TO: Media/Press

FROM: Judicial Conduct Board

SUBJECT: Board Files Answer to Application For Supersedeas, Stay, and Extraordinary Relief of Ann H. Lokuta

Harrisburg. On March 9, 2009, the Board filed in the Pennsylvania Supreme Court its Answer to the Application For Supersedeas, Stay, and Extraordinary Relief of Ann H. Lokuta, former judge of the Luzerne County Court of Common Pleas.

Counsel: Board: Francis J. Puskas II, Esquire, Deputy Chief Counsel

Appellant: Ronald V. Santora, Esq.

Contact: Joseph A. Massa, Jr., Esq.
Chief Counsel, Judicial Conduct Board
Francis J. Puskas II, Esq.
Deputy Chief Counsel

Note: Judicial Conduct Board Answer to Appellant's Application For Supersedeas, Stay, and Extraordinary Relief attached.

END

IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

In re:	:	
Ann H. Lokuta	:	
Former Judge of the Court of	:	No. 26 MM 2009
Common Pleas	:	
11th Judicial District	:	
Luzerne County	:	

JUDICIAL CONDUCT BOARD ANSWER TO
APPELLANT'S APPLICATION FOR SUPERSEDEAS, STAY, AND
EXTRAORDINARY RELIEF

AND NOW, this 9th day of March 2009, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (hereinafter "Board"), by and through Francis J. Puskas II, Deputy Chief Counsel, pursuant to Rule 123 (b) of the Pennsylvania Rules of Appellate Procedure, and files the Judicial Conduct Board's Answer to Appellant's Application for Supersedeas, Stay, and Extraordinary Relief.

Preliminarily, the Board notes the Appellant fails to specify the rule of appellate procedure under Chapter 17 governing her Application. Instead, the Appellant references Rule 123 in tandem with Rule 1703 as the basis for her Application. Rule 123 addresses applications for relief generally. Chapter 17 of the Pennsylvania Rules of Appellate Procedure governs applications for supersedeas and stays. While the Appellant references Rule 1703, this is a

general rule addressing the contents of an Application seeking supersedeas and stays, rather than the specific rule addressing the type of stay (civil, criminal, or pending action on petition for review). [1]

In order for the Board to properly answer the Application, it is necessary to understand the specific provision under which the Appellant proceeds, which implicates certain requirements for application contents, notice and service on the lower court or government unit (which the Appellant does not appear to have done), and that application first be made to the lower court. By failing to properly identify the governing appellate rule under which the Appellant proceeds, the Appellant leaves the matter to conjecture and impedes the Board's ability to meaningfully respond. Nonetheless, the Board proceeds with its Answer.

1. **Admitted.**

2. **Admitted in part. Admitted** that by Order dated December 9, 2008, the Court of Judicial Discipline removed the Appellant from office and prohibited her from holding any judicial office in the Commonwealth of Pennsylvania. Pursuant to Article V, §16(b) of the Pennsylvania Constitution, as a consequence of the Appellant's removal based upon findings that she violated the Pennsylvania Constitution by bringing disrepute upon the judiciary and prejudicing the proper administration of justice, the Appellant was no longer entitled to any salary, retirement benefit or other compensation, present or deferred. The Board has no

[1] Rule 1781 pertains to an application for "stay pending action on petition for review" and references the seeking of a stay of a determination made by a "government unit." Rule 102 defines "government unit" as including "any court or other officer or agency of the unified judicial system," so this provision is not limited to government commission

knowledge concerning the Appellant's current employment status or whether she *"has depleted all of her available sources of funds."*

3. **Denied as stated.** By way of further answer, following the Court of Judicial Discipline's December 9, 2008, sanction order removing the Appellant from office and prohibiting her from holding any judicial office in the Commonwealth of Pennsylvania, an Order for which the Appellant sought no stay or supersedeas, the Secretary of the Commonwealth properly determined that Appellant's seat on the Luzerne County Court of Common Pleas was vacant and open for the 2009 municipal primary and general elections.

The Federal Investigations of Luzerne County Court of Common Pleas

4. **Denied as stated.** During trial, the Appellant testified she contacted the U.S. Attorney's Office, and in response to her contact, the Federal Bureau of Investigation ("FBI") then contacted and met with her. Trial Tr. 2862:19-21, January 14, 2008. The Appellant testified she made contact with the U.S. Attorney's Office *"[n]ot about Judge Conahan specifically. About docketing."* Trial Tr. 3256:5-6, January 15, 2008. She further testified that she met with the FBI *"with respect to the docketing in Luzerne County."* Trial Tr. 2861:13-14, January 14, 2008.

The Appellant further testified that she discussed with the FBI three civil cases reassigned from her docket by former President Judge Michael T. Conahan, namely cases she identified as *Pockevich v. Lindstrom, Jr. et al.*, No. 4579C of 2001, *Kamus*

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or administrative agency decisions.

v. State Farm Mutual, et al., No. 6262C of 2000, and *Sheridan v. Com., Dep't of Transp.*, No. 2665C of 2003 (driver's license suspension appeal). Trial Tr. 2847-2860, 2861:3-9, January 14, 2008. The Appellant claimed Judge Conahan disposed of the *Sheridan* case in favor of the plaintiff *"in a closed-door session."*[2] Trial Tr. 2860: 13-16, January 14, 2008. The Appellant testified she viewed the reassignment of the cases and Judge Conahan's handling of the three cases to be improper conduct. Trial Tr. 2860:17-21, January 14, 2008. The Appellant did not testify she provided any other information to the FBI. Noticeably, the Appellant provided no testimony that she provided to the FBI or U.S. Attorney's Office any information relevant to the prosecutions of former Judge Conahan, former Judge Ciavarella, former Court Administrator William Sharkey, or Prothonotary Jill Moran.

A. **Denied.**

On August 25, 2006, the Board deposed the Appellant regarding matters raised in its written Notice of Full Investigation and Supplement. One area of inquiry concerned an incident occurring in the courthouse involving the Appellant, her then tipstaff Maureen Gushanas, and Deputy Court Administrator Peter J. Adonizio. Part or all of the incident was seen and/or heard by six (6) other individuals[3], five (5) of whom made written statements as part of an internal courthouse investigation which former

[2] Former Judge Conahan testified the courtroom doors were open until the end of the hearing when they were closed so he could view and hear a video tape of a DUI breath-testing. Trial Tr. 3725: 7-23, January 16, 2008.
[3] Ann Burns (Deputy Court Administrator), Harold Refowich (Jury Board Room), Michael Onderko (Tipstaff to Judge Joseph Augello), Theresa Hannon (Executive Secretary to Judge Joseph Augello), Michelle Klinefelter (Deputy Sheriff), and former Judge Michael Conahan. Excepting former Judge Conahan, all provided written

Judge Conahan directed to be conducted after the Appellant sent him a letter claiming Adonizio had threatened and menaced her and Gushanas.

During the deposition, Deputy Chief Counsel pointed out to the Appellant that the six (6) individuals who saw and/or heard the incident contradicted her and Gushanas' version of the incident and faulted the Appellant and Gushanas. Part of the Appellant's response was that the individuals were not credible for various reasons, including that *"they're under the direct control of Judge Michael T. Conahan."* Deposition Tr. 157: 17-18, August 25, 2006. When Deputy Chief Counsel highlighted the difficulty this response presented to the Board, because the Appellant was essentially asking the Board to disbelieve six (6) individuals because she dubbed them all under the control of Judge Conahan, the Appellant's counsel, Samuel Stretton, Esq., spontaneously interjected information based on his personal experience when he served as solicitor to the Luzerne County Prothonotary and Controller to bolster the Appellant's broad claim that everyone was under the control of Judge Conahan: *"So I want you to understand that this is not the normal County."* Id. at 157:12-13.

It is a mischaracterization to bootstrap Mr. Stretton's spontaneous statements into constituting the Appellant's expression of *"the areas that she was looking at concerning the interrelationship between Judge Conahan, Judge Ciavarella, and other Courthouse employees, and the impact it had over Lokuta's ability to function*

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statements as part of the internal investigation. At trial, all were called as Board witnesses except Ann Burns.

as a Judge in the 11th Judicial District."

B. **Denied as stated.**

By way of further answer, during the deposition, the Appellant stated she tried to resolve the Adonizio incident with a telephone call to former Judge Conahan, but her call resulted in an *"unreasonable, non-gracious interaction."* Id. at 170:10. Deputy Chief Counsel queried whether the Appellant had tried to mediate her problems with her president judge and the Appellant spoke about *"the climate I must labor under each and every day"* and how she was *"being marginalized to the point that I can't even perform my judicial duties."* Id. at 172:2-3, 174:18-20. Deputy Chief Counsel then pointed out that the allegations made against the Appellant

> *are not made by P.J. Conahan, are not made by other judges. They are made by people who come into your courtroom, people who work for you.*
>
> *And I don't see the relationship between that and what you're saying about the judges around you, because this involves your personal behavior toward people. Nobody has control over that but you.*

Id. at 175:7-14. Instead of responding, the Appellant raising other issues, including a claim that Judge Conahan told court reporters not to respond to subpoenas to appear at a recusal hearing, that the Appellant's former executive secretary, Susan Weber, after quitting her job with the Appellant because of her abusive behavior, got another job in the court as a stenographer/secretary when she did not take stenographic notes, that the Appellant's judicial opinions were sound, and that she was not a *"judicial harpy."* Id. at 175-178.

Following the Appellant's discourse, Mr. Stretton again spontaneously interjected information from his personal experience. Mr. Stretton's statements were not offered to "explain how [the Appellant's] Judicial role was being marginalized to the point that she was not able to function based upon the control and actions of then President Judge Conahan." Mr. Stretton suggested, however, that people working in the Luzerne County court system are offered things or benefits and in return, *"It makes people lie."* Id. at 179-182; 180:12.

5. **Denied.** Former Judge Michael Conahan, former Judge Mark Ciavarella, former Deputy Court Administrator William Sharkey, and Prothonotary Jill Moran constitute four (4) witnesses among a total pool of thirty-one (31) who testified as part of the Board's case. Specifically, former Judge Conahan testified as a witness in the Board's case-in-chief and as a rebuttal witness. Former Judge Ciavarella testified solely as a rebuttal witness. William Sharkey and Jill Moran testified as witnesses in the Board's case-in-chief. Setting aside distinction based upon their titles within the court system, the substance of their testimony was no more "key" to the Board's case than any other witness.

6. **Admitted.**

7.

   A. **Denied as stated.** By way of further answer, by Order dated April 17, 2007, the Honorable Richard A. Sprague, Conference Judge, directed the parties to file pre-trial memoranda, which, *inter alia*, "shall contain the following":

> a. The names and addresses of all witnesses expected to testify at trial, and the subject of the testimony of each.

On June 7, 2007, the Board filed its pretrial memorandum listing forty-one (41) witnesses and complied with Judge Sprague's Order, providing each witness' name, address, and identifying the substance of their testimony in relation to specific paragraphs of the Board Complaint. The Appellant also filed a pretrial memorandum listing sixty-nine (69) witness entries; however, she did not comply with Judge Sprague's Order. The Appellant's Paragraph 67 witness entry was devoid of any witness names, addresses, or meaningful substance beyond broad and vague references to federal investigators as follows:

> Respondent reserves the right to call any federal investigators, as of cross examination to testify concerning any federal investigation, its temporal and substantive scope, witnesses identified and/or interviewed, and information, materials and documents discovered in the course of any investigation.

By Order dated June 13, 2007, Judge Sprague directed the parties to file revised witness lists on or before July 6, 2007, or, in the alternative, advise the Court in writing that no revision was necessary to comply with the Court's ruling that such list only include those witnesses whose testimony will be relevant to the matters included in the Board's Complaint.

On July 6, 2007, in response to Judge Richard Sprague's Order, the Appellant filed Respondent's Revised Witness List, increasing her witness list entries from sixty-nine (69) to seventy-four (74). In Paragraph 72, the Appellant provided the identical vague information she listed in her original witness list under

Paragraph 67.

B. **Denied as stated.** By way of further answer, Deputy Chief Counsel, by letters dated July 18, 2007 and July 31, 2007, repeatedly requested that Appellant's counsels, Louis Sinatra, Esq., and Nancy Burdine, Esq., comply with Judge Sprague's Orders and provide the names, addresses, and the subject of the testimony of *"any federal investigators"* referenced in Respondent's Revised Witness List Paragraph 72. By letter dated August 9, 2007, attorney Sinatra rebuffed the Board's request with the claim that they had *"fully complied with Judge Sprague's Orders"* and the proclamation that *"this matter is closed until the time of trial."* In response, on August 10, 2007, the Board filed a Motion to Compel and For Sanctions, which included the request that the Appellant be ordered to provide the Board the requested information and if she failed to do so, a request that she be prohibited from calling at trial any witnesses referenced in Paragraph 72.

C. **Denied as stated.** By way of further answer, after the Appellant filed Respondent's Answer to the Judicial Conduct Board's Motion to Compel and For Sanctions on August 22, 2007, by Order dated August 28, 2007, Judge Sprague granted the Board's Motion to Compel and directed the Appellant to file of record by September 5, 2007, an amendment revising Paragraph 72 to provide the names, addresses and substance of the testimony of the "federal investigators" referenced. The Order directed that if the Appellant failed to comply, "no 'federal

investigators' referred to in paragraph 72 of Respondent's Revised Witness List will be permitted to testify."

D. **Denied as stated.** By way of further answer, on September 5, 2007, the Appellant did not comply with Judge Sprague's Order of August 28, 2007. Instead, she filed a Motion for Reconsideration, averring in her Paragraph 3

> After discussion with certain federal authorities and consideration of the requirements of Section 1621 of Title 28 of the Code of Federal Regulations relating to a declaration of proposed testimony, Respondent respectfully requests reconsideration by the entire panel of the August 28, 2007 Order.

The Appellant also averred in her Paragraph 6 that requiring compliance with Judge Sprague's Order "at this time at the risk of a preclusionary Order for failure to comply is prejudicial to Respondent and compliance may be deemed to be prejudicial to the federal authorities."

E. **Denied as stated.** By way of further answer, by Order dated September 10, 2007, Judge Sprague denied the Appellant's Motion for Reconsideration and again ordered that the Appellant "shall comply" with the Order of August 28, 2007. Judge Sprague extended the deadline for compliance to September 14, 2007, and directed that if the Appellant failed to comply, "the Court will enter an order barring the testimony of the 'federal investigators' referred to in paragraph 72 of Respondent's Revised Witness List."

On September 14, 2007, the Appellant again failed to comply. Instead, the Appellant filed an Amendment to Respondent's Revised Witness List which

notified the Court she was deleting Paragraph 72 referring to federal investigators. In her Amendment, the Appellant wrote, "Respondent believes that public testimony from the officials referenced in Paragraph 72 may compromise an important federal investigation." The Appellant offered no explanation for why previously listing "federal investigators" for public testimony did not compromise any federal investigation.

F. **Denied as stated.** By way of further answer, during trial, the Appellant took the position that she did not commit that actions described by Board witnesses and the Board's witnesses were perjuring themselves by providing false testimony against her. When Judge Sprague queried if there was a *"common connection between all these people that you see, for them all to be saying what they're saying,"* the Appellant responded, *"They all serve at the benefit of the president judge. They're all employed by Luzerne County. They are a very cliquish environment."* Trial Tr. 2463: 8-15, December 13, 2007.

Later in her testimony, the Appellant began referencing, *"Well, I think that there's this motive."* Id. at 2466:18-19. This prompted Judge Sprague to point blank query whether the Appellant thought there was a conspiracy against her: *"Do you think there's a conspiracy by all these people to get you?"* The Appellant stated, *"And my response to you would be, yes, Your Honor. I believe, many times, in conspiracy theories"* and asserted *"I believe that there's a concerted effort to make sure that Ann Lokuta is no longer a judge sitting in the*

Eleventh Judicial District." Id. at 2467:3-20.

The Appellant asserted that the conspiracy against her was directed by *"the power elite"* and that Judge Michael Conahan was the mastermind. Id. at 2992: 23-24, 3023:2-6, January 14, 2008. When asked when the conspiracy against her started, the Appellant claimed *"it became very active as soon as Judge Conahan became the president judge, because his first official order was to banish me from my chamber of ten years, after I was retained, and send me over to the Penn Place facility."* Id. at 3020:13-24, January 14, 2008. The Appellant, however, offered no explanation for why Judge Conahan would be masterminding a conspiracy against her. The Appellant even went so far as to assert that the *"power elite"* had influenced the Board, an independent state agency comprised of twelve (12) appointed individuals, in the action they took against her. Id. at 2993-2996, January 14, 2008. When the Appellant was cross examined about whether she included the sheriff in the conspiracy against her, she explained

> *Well, it depends on how one defines conspiracy. You could have a cog within a cog or a wheel within a wheel. You could have all different branches coming out. You're just saying that this is one concentric circle. You can have a totality of conspirators.*

Id. at 3010:15-21, January 14, 2008.

In fact, without any credible evidence, the Appellant placed witness after witness in the conspiracy. For example, the Appellant placed her summer law school student intern, Rebecca Sammon, in the conspiracy against her based on influence she claimed her former executive secretary exerted as follows:

I believe that she came under the influence of Susan Weber.

Susan Weber was a wonderful saleswoman. She sold me on the belief that she would come back, would try to work hard, and she never did, Your Honor.

Id. at 2475:6-13, December 13, 2007. The Appellant conceded, however, that she did not even know if Sammon had a close relationship with Weber: *"I don't know their relationship,"* but *"I think she's caught up in what has been this dynamic."* Id. at 2977-2978, January 14, 2008. At the same time, the Appellant described Sammon as *"very close"* to another staff person in her office, her then tipstaff, Maureen Gushanas, not Weber. Id. at 2486-2487, December 13, 2007, 2977, January 14, 2008. She described Gushanas as *"very loyal," "one of the best"* employees she ever hired, and someone not in conspiracy against her. Id. at 2965-66, January 14, 2008. In fact, Gushanas testified on behalf of the Appellant at her trial, at which time she was the Appellant's executive secretary. When confronted with her incredible assertion regarding Sammon as a conspirator, and the circumstance that Sammon would turn her back on her very close friend Gushanas, and the Appellant, because of Weber being a *"wonderful saleswoman,"* the Appellant could not even place a motive for Sammon to provide false testimony:

You're asking me to put a motive to what this woman is doing. I can't do that. I heard her testify. I – I don't know what's going on in her life. I don't know who she's friendly with now.

Id. at 2978: 7-11.

Likewise, with similar incredible and less than persuasive logic, the Appellant placed Judge Joseph Augello's executive secretary, Theresa Hannon, who had worked for him for 30 years, in the conspiracy against her because she claimed that prior to working for Judge Augello, Hannon was a secretary to attorney Michael Butera, Esq., who the Appellant claimed filed a complaint against her and she or her family once sued him for malpractice:

> *I believe that at one point in time, I sued or my family sued the Butera Law Firm for malpractice. I believe that Theresa Hannon is very close to Mr. Butera. And I believe that, as I've testified, I've never had a good rapport with this woman, and now you sort of know why.*

Id. at 3019: 8-22, January 14, 2008.

The Appellant even placed her former part time senior law clerk, Theodore Krohn, Esq., a man she described as a father figure, someone she had a great deal of respect for, and someone she endearingly called her Clarence Darrow, in the conspiracy against her. Id. at 3015-3016, January 14, 2008. Because Krohn had served at the Appellant's pleasure, not the president judge, and had his own private practice, the Appellant was asked how he fit into her notion of conspiracy. The Appellant responded thus:

> *I haven't figured that one out exactly. I do know Ted was very interested in court appointments and gaining some money when he left my employ. But I have not checked out what he's doing. I believe he's a land developer, I might be wrong.*

Id. at 3018:11-16, January 14, 2008.

The Appellant provided similar logic to support her placement of other witnesses in conspiracy. None of the Appellant's varied explanations for how certain persons fit into her notion of conspiracy, or did not fit into it but nonetheless provided false testimony against her, was credible, cohesive, convincing, or persuasive. The Appellant never once indicated she was holding back information to support her notion of conspiracy because she did not want to jeopardize federal investigations. To the contrary, she testified about her contact with the federal authorities and what information she provided to them as indicated in Paragraph 4 above. The Appellant was not severely prejudiced.

8. **Denied.** Based on the Appellant's trial testimony regarding the substance of what information she provided to the federal authorities, to the extent the Appellant is suggesting the federal investigations involving former Judge Conahan, former Judge Ciavarella, former Court Administrator William Sharkey, and Prothonotary Jill Moran have come to fruition because of her assistance, the Board **denies** such claim. The Board has no knowledge about continuing investigations being conducted by federal authorities.

9. **Denied.** On November 27, 2006, after the Board had completed its investigation and interviewed and/or deposed numerous individuals, including the Appellant, the Board filed a formal Board Complaint in the Court of Judicial Discipline against the Appellant. The Appellant's counsel, Samuel Stretton, Esq., was provided the primary

bulk of discovery on December 8, 2006 (five (5) depositions), December 20, 2008 (sixty-five (65) items, including thirty-nine (39) Reports of Interview), and January 29, 2007 (two (2) Reports of Interview).

According to federal authorities, in the summer of 2006 they commenced an investigation regarding the building of the new, privately-owned juvenile detention center in Luzerne County and the role played in it by Judge Conahan and Judge Ciavarella. The Appellant did not initially meet with the FBI until February 12, 2007. If anyone can be characterized as seeking retribution or retaliation, it was the Appellant, who met with the FBI **after** she received trial discovery and had access to Board witness interview reports and depositions, which were unflattering toward her and contained information forming the basis of the Board's prosecution.

Constitutional and Due Process Irregularities

10. **Denied**. It is denied that *"troubling issues"* have been presented that have any bearing on the Appellant's case or that they, or *"additional troubling issues"* as referenced below, provide any indication that the Appellant will *"have a high degree of probability of success on Appeal."*

In determining whether to grant an application for stay or supersedeas, Pennsylvania law balances four (4) factors: (1) The petitioner makes a strong showing that he is likely to prevail on the merits; (2) The petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) The issuance of a stay will not

substantially harm other interested parties in the proceedings; and (4) The issuance of a stay will not adversely affect the public interest. *Pennsylvania Pub. Util. Com'n v. Process Gas Consumers Group*, 502 Pa. 545, 552-554, 467 A.2d 805, 808-809 (1983) (hereinafter "Process Gas")(adopting the standards set forth in *Virginia Petroleum Jobbers Ass'n v. Fed. Power Com'n*, 259 F.2d 921 (D.C.Cir.1958), as refined by *Washington Metro. Area Transit Com'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C.Cir.1977), as the criteria of Pennsylvania courts for the issuance of a stay pending appeal); *Maritrans G.P., Inc. v. Pepper, Hamilton & Scheetz*, 524 Pa. 415, 420, 573 A.2d 1001, 1003 (1990). Our Supreme Court has noted that "it is essential that the unsuccessful party, who seeks a stay of a final order pending appellate review, makes a strong showing" under the factors to justify the issuance of a stay. *Process Gas* at 502 Pa. 553; 467 A.2d 809.

A balancing of these factors upon the information presented in this Application, which the Board's Answer addresses below, does not weigh in favor of granting a stay, but against it in favor of the interests of the public and candidates in the Luzerne County judicial elections coming this year.[4] The Appellant has made no strong showing she is likely to prevail on the merits in her appeal and the competing interest outweigh any injury she could claim to suffer.

A. **Denied.** On April 4, 2007, the Appellant filed Respondent's Motion to Recuse Richard Sprague. On April 5, 2007, the Board filed a Response.

[4] The Board defers to the Secretary of the Commonwealth's position in its Memorandum regarding the impact on the

By Order dated April 9, 2007, Judge Sprague denied the Motion. It is denied that Judge Sprague was required to recuse from the Appellant's case based upon any proffered basis contained in her Motion. Judges are presumed impartial unless proven otherwise and Canon 3 C "imposes standards of conduct upon the judiciary to be referred to by a *judge* in his *self-assessment* of whether he should volunteer to recuse from a matter pending before him." *Reilly by Reilly v. Southeastern Pennsylvania Transp. Auth.*, 507 Pa. 204, 219, 489 A.2d 1291, 1298 (1985).

Judge Sprague was not required to recuse simply because his law firm represented PA Child Care in a suit against the Luzerne County Controller commenced in 2004. The fact that Jill Moran was in the same law firm as Robert Powell, Esq., who co-owned PA Child Care, but who was not a trial witness or even a person interviewed by the Board as part of its investigation, did not mandate that Judge Sprague recuse, or evidence that his impartiality in evaluating any evidence coming from Moran, along with the other six (6) judges on the Court of Judicial Discipline participating in the decision, could reasonably be questioned.

Further, the fact that PA Child Care was the juvenile detention facility at the center of a subsequent federal investigation of Judge Conahan and Judge Ciavarella had no bearing on the Appellant's case. Judge Sprague,

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voting public and other candidates vying for seats on the Luzerne County bench.

in his self-assessment, could determine that he could be impartial in hearing Moran's testimony. While the Appellant continues to peddle the notion that Board witnesses were in conspiracy to fabricate evidence about her, a conspiracy she claims was controlled by former Judge Conahan, she provided no evidence to credibly support it and witnesses denied the far-fetched theory. Noticeably, at trial she never even identified Judge Ciavarella as part of a conspiracy against her. Yet she presently pursues her Application by now claiming she was the victim of retaliation for her cooperation in the federal investigations, involvement that did not occur until after the Board filed charges against her and provided her with discovery, and all while she rests upon trial testimony evidencing she provided nothing contributing to the federal prosecutions to which she claims to have been a part.

i. **Denied as stated.** By way of further answer, at the time the Appellant filed her recusal motion, PA Child Care was co-owned by Robert Powell, Esq., and Gregory Zappala. Jill Moran was an attorney with The Powell Law Group and also served as the elected Luzerne County Prothonotary. Moran and two (2) other prothonotary clerks, namely Donna Miscavage and Maura Cusick, testified as Board witnesses. The substance of their testimony was no more "key" to the Board's case than any other witness. The Board's case was built upon an accumulation of testimony from all

witnesses about incidents both large and small in significance, occurring continually, repeatedly, and unpredictably, the totality of which evidenced the Appellant had violated the Pennsylvania Constitution and the Code of Judicial Conduct.

ii. **Denied as stated.** By way of further answer, by Order dated April 9, 2007, Judge Sprague denied the Appellant's recusal motion after considering both her motion and the Board's Response. Following the Court of Judicial Discipline's decision finding that the Appellant violated the Pennsylvania Constitution and the Code of Judicial Conduct, and following its decision to remove her from office, federal charges were filed on January 26, 2009, against then Judge Conahan and Judge Ciavarella. Subsequently, on February 3, 2009, federal charges were filed against then Court Administrator William Sharkey. Finally, on February 25, 2009, federal charges were filed against Prothonotary Jill Moran along with a Stipulation in Compromise.

iii. **Denied as stated.** By way of further answer, Richard A. Sprague's letter dated February 11, 2009, representing that the law offices of Sprague & Sprague represent Robert Powell, speaks for itself.

B. **Denied.** To the extent the Appellant suggests that Judge Sprague's "failure" to reopen her case was improper, the Board denies such claim. By way of further answer, on June 13, 2008, the Appellant filed a Motion

to Reopen the Case based upon newspaper articles reporting business connections between Judge Conahan, Judge Ciavarella, and Jill Moran. The Appellant related, *inter alia*, that Board witnesses Judge Conahan, Judge Ciavarella, and Moran had business connections that *"have become a public scandal in Luzerne County"* and such connections were relevant to *"corroborate Respondent's contention relative to a collaborative effort of a part of certain Board witnesses."* Respondent justified her request to reopen the case by mischaracterizing this information about common business connections as constituting *"exculpatory evidence"* she claimed was recklessly ignored by the Board. In fact, it did not constitute exculpatory evidence as it did not in any way establish the Appellant's innocence of the violations charged. By Order dated June 18, 2008, Judge Sprague denied the Motion.

Undaunted, on June 27, 2008, the Appellant filed Respondent's Motion To Dismiss The Case Or Alternatively, To Reopen The Case. Again, the Appellant referenced media reporting of common financial interests between Judge Conahan and former Board Chairman Patrick Judge[5]. Specifically, the Appellant averred, *inter alia*, that Judge Conahan and Patrick Judge had common financial interests in Trans-Med Ambulance

[5] Patrick Judge served as the Board Chairman when the Board unanimously voted to approve the filing of formal charges against her in the Court of Judicial Discipline.

and MCJ Holding, L.L.C.[6] as evidenced by filed Statements of Financial Interest in 2007 and 2008. As in her previously denied Motion, the Appellant again claimed the common business investments *"have become a public scandal in Luzerne County,"* and that the *"disclosures support and corroborate Respondent's trial testimony relative to a collaborative effort orchestrated by Judge Conahan to remove Respondent from the bench."* The Appellant again characterized the information as constituting *"exculpatory evidence."*

The Appellant cited no legal authority justifying the extraordinary action of reopening her closed case based upon the media reporting common business investments between Judge Conahan and former Board Chairman Patrick Judge, which she wrote had *"become a public scandal in Luzerne County."* She also provided no explanation for how the media *"disclosure"* of the existence of these common business investments corroborated her notion that Board witnesses were part of a conspiracy to fabricate incidents of judicial misconduct about her. By Order dated July 3, 2008, Judge Sprague denied the Motion.

i. **Denied.** At trial, in response to questions from Deputy Chief Counsel, Judge Conahan denied that he was in a conspiracy against the Appellant, denied that he had any agreement with any other Luzerne County judge or judges to provide false information about the Appellant, denied that he had

[6] None of these entities have been linked to the federal prosecutions concerning the juvenile detention center.

any agreement with any other witnesses who testified to provide false information to the Court about the Appellant, denied that he had any agreement to assist or aid other witnesses who testified in providing false information about the Appellant, denied that he pressured or coerced any witnesses who testified to provide false information about the Appellant, denied that he directed or instructed any witnesses who testified to provide false information about the Appellant, denied that he offered any inducement to witnesses who testified to provide false information about the Appellant, and denied that he threatened any witnesses who testified with loss of employment in the court system if they did not provide false information about the Appellant. Trial Tr. 3691-3693, January 16, 2008.

In response to a question from Judge Sprague, Judge Conahan denied he was aware of a conspiracy against the Appellant: *"I'm not aware of any conspiracy or any group, you know, of judges who were conspiring against Judge Lokuta or any judge."* Id. at 3698:20-23, January 16, 2008.

In response to a question from the Appellant's counsel about whether he had a collegial relationship with any of the other judges, Judge Conahan responded, *"It would probably be Judge Ciavarella. He's my next door neighbor."* Id. at 3712: 8-9, January 16, 2008. It is **denied** that former Judge Conahan and former Judge Ciavarella's guilty pleas to federal charges demonstrates leads to the conclusion that any of their trial

testimony *"was obviously false."*[7]

ii. **Denied.** To the extent the Appellant is claiming she had no opportunity to explore relationships among witnesses presented at trial, it is **denied.** The Appellant was represented by experienced trial counsel who cross examined every witness, more often in excruciatingly, lengthy detail. The fact is that the Appellant was not prevented from exploring anything proper for cross examination, including the bias of any witness. To date, the Appellant still fails to demonstrate how the federal investigations and prosecutions have any relationship to her notion that Board witnesses conspired to fabricate evidence about her at trial with former Judge Conahan masterminding a conspiracy. Such information would have been irrelevant to her case.

iii. **Denied.** The Board incorporates all prior answers. There is no evidence to support that the Appellant's contact with federal authorities, or the subsequent federal investigations or prosecutions, had any bearing on how truthful Board witnesses were at the Appellant's trial, or established that there was a conspiracy to fabricate evidence about her.

C. **Denied.** At trial, the Appellant testified about Judge Conahan interfering with her cases, specifically testifying about three (3) cases reassigned from

[7] Appellant in her footnote no. 2 to this section speculates that if Judge Sprague knew about Judge Conahan's *"ability to influence and pressure individuals, as he admits with his own client. . .[this] casts doubt upon his determination of the Board witness' credibility in his Opinion of October 30, 2008."* It is denied that this does any such thing. While the Board does not concede such speculation as there is no evidence to support it, such

her docket referenced in Paragraph 4 above. To the extent the Appellant is suggesting the Court of Judicial Discipline *"summarily dismissed"* her position that they conspired to reassign cases, it is **denied**. The Appellant did not testify about anything she now dubs a "conspiracy" to reassign cases, or that such circumstance connected to her notion of conspiracies to fabricate evidence about her conduct.

The Appellant was given two court assignments by Judge Conahan, the first involved her assignment to the Penn Place Court facility, which former Judge Ciavarella wanted at the time but was not given. The second was her reassignment back to the main court facility, which was done after the Appellant filed a complaint with the Administrative Office of Pennsylvania Courts and it was requested that Judge Conahan *"transfer her back to the main courthouse for medical reasons that he did not want to disclose."* Trial Tr. 3688-3689, January 16, 2008.

The Board denies that the Appellant was *"chastised and penalized"* by the Court of Judicial Discipline for merely attempting *"to address, in open Court, the problems the public was experiencing due to Conahans's actions."* This is a mischaracterization of what the Appellant was doing.

At trial, the Board presented six (6) transcripts, along with corroborating testimony from witnesses, that the Appellant, in open court to captive

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circumstance arguably would be favorable to the Appellant during her trial, not detrimental.

audiences, repeatedly criticized other court departments and the President Judge, something designed to bolster the Appellant's personal image at the expense of the judiciary. The Court of Judicial Discipline found the Appellant's statements violative of both the Pennsylvania Constitution and the Code of Judicial Conduct and described them, in part, as follows:

> These transcripts exemplify what the witnesses were talking about. Reading the words spoken by Respondent in open court one first is startled by their thoroughly derogatory content, and by the animosity with which they are delivered.

In re Lokuta, 3 JD 2006, 2008 WL 5172360 (Pa.Ct.Jud.Disc. October 30, 2008), at *65.

> These elocutionary excursions, embarked upon repeatedly by Respondent, commonly delivered upon the opening of court when courtroom occupancy normally peaks, were inappropriate, intemperate and uncalled for. They show no respect for the offices of the president judge and the court administrator and, more than that, they are frankly contemptuous of those offices. Probably the most important observation provoked by review of these speeches is that they show an abysmal lack of judgment.

Id. at *65.

> It would be hard to call up any course of conduct which would be more antagonistic to the injunction of the Canon than that described in this record. These digressions, far from "facilitating" the efforts of other judges and court officials to fulfill their responsibilities, were intended to accomplish the opposite. These digressions took public Respondent's disaffection with the court system and the perceived discriminatory treatment she was receiving from the president judge. These digressions were delivered to captive audiences composed of people with business to do, and with such frequency that they became "routine."

Id. at *66.

D. **Denied.** See Paragraph 10B above.

E. **Denied.** The fact that the Appellant has repeatedly over the course of her prosecution and trial characterized Board witness testimony based on personal experience with, and observation of, the Appellant's conduct as *"highly subjective, vague, amorphous"* does not diminish its evidentiary validity. The vast majority of incidents involving the Appellant's misconduct were not transcribed in a written record; however, court reporters recalled such incidents and testified about them.

The Appellant fails to draw a distinction between the existence of transcripts and the ability to access them. For those incidents of misconduct that were transcribed and no transcript was located, it was because court reporters could not recall all information needed to access it. Court reporters testified they could only access a particular transcript if they had the exact date of the proceeding involved, the case caption, and the name of the presiding judge, something they were unable to determine for all matters testified about. Trial Tr. 624:12-24, 796: 1-10, September 26, 2007. This did not invalidate their testimony about incidents based on personal experience and memory.

In one instance, the Appellant's counsel took issue with Deputy Chief Court Reporter Daniel Coll not having a transcript for a proceeding

involving an incident of the Appellant's misconduct he testified about. Coll testified he only remembered the incident occurring in 2000 and could not recall the name of the matter and was unable to access it. He stated, however, that *"[t]he Judge should have one in her file. She had me transcribe it for her."* Trial Tr. 607-608, September 25, 2007. The Appellant never produced or offered such transcript at her trial to contradict Coll.

i. **Denied as stated.** By way of further answer, to the extent the Appellant is suggesting that Judge Sprague improperly prevented her from presenting general testimony about her *"demeanor, temperament, and courtroom conduct,"* it is **denied**. At the pretrial conference held on June 12, 2007, Judge Sprague ordered the following with reference to what witnesses the Appellant could call at trial:

> *I'm going to rule that the only witnesses that can be called, whether they are judges, clerks, whoever, are witnesses who are going to testify as to what the respondent's behavior was on the occasion of specific evidence that the Board has presented of alleged misconduct, or, in addition, any witness who the respondent desires to call, whether it be a judge or otherwise, is in a position to impeach the specific witness that the Board has called regarding a specific instance.*
>
> *I will not allow this just general testimony concerning other occasions the judge showed proper behavior and was knowledgeable overall.*

Pretrial Conference Tr. 57, June 12, 2007. (Emphasis added). In effect,

Judge Sprague was ordering that if the Board presented evidence of misconduct on a Monday, the Court was not going to entertain testimony about how the Appellant behaved on Tuesday, which would have been irrelevant. The Board never claimed that the Appellant committed judicial misconduct every single day of her tenure on the bench, so her evidence necessarily, and properly, had to be directed at the specific incidents of misconduct alleged.

ii. **Denied as stated.** By way of further answer, from the onset of the Board's prosecution in the Court of Judicial Discipline, it characterized its case as generally delineating a pattern of recurring judicial misconduct by the totality of the Appellant's behavior toward attorneys appearing before her, court personnel, personal staff, and others, having contact with her as a judicial officer, as evidenced by specific incidents. Judge Sprague did no more than permit the Board to present specific incidents of misconduct and gave the Appellant the opportunity to respond to each incident.

The majority of the charged misconduct was based upon incidents dating from 2001 to 2005. Others dated back to the Appellant's earliest years on the bench and involved similar conduct to that occurring later in her judicial career. Some of the

incidents, like the Appellant's negative courtroom commentary referenced in Paragraph 10C above, were described by witnesses as recurring conduct and the Board presented specific instances of it.

It is **denied** that the Board was permitted to present evidence barred by any statute of limitations. By way of further answer, Rule 15 of the Judicial Conduct Board Rules of Procedure provides that

> [e]xcept where the Board determines otherwise for good cause, the Board shall not consider complaints arising from acts or omissions occurring more than four years prior to the date of the complaint, provided, however that when the last episode of an alleged pattern of recurring judicial misconduct arises within the four-year period, the Board may consider all prior acts or omissions related to such an alleged pattern of conduct.

Taken as a whole, the Board Complaint charges indicated that the Appellant had engaged in a pattern of recurring judicial misconduct toward attorneys, court personnel, and personal staff, which manifested itself through the Appellant's improper demeanor, abusive behavior, and inappropriate use and treatment of such persons. The Board presented numerous specific incidents of this conduct which, taken together as a whole, exemplified what it termed a pattern of abusive and inappropriate behavior that had been continual since the Appellant came to the bench. The Board charges for this abusive and inappropriate behavior were based on witness testimony that covered periods within the Rule 15 four-year

period and, in some instances, particularly with long serving court reporters, to the years predating it and stretching to the beginning of the Appellant's judicial career. Pursuant to Rule 15, the Board could determine to include the earlier incidents. The Board did so and proved its case by reference to specific incidents which the Appellant had every opportunity to address through cross examination and direct testimony, which she did.

During trial, Judge Sprague's rulings were entirely consistent with his pretrial conference Order of June 12, 2007. The Appellant, however, repeatedly tried to interject general testimony about her behavior that was non-responsive and irrelevant to specific incidents witnesses testified about. To the extent the Appellant suggests that Judge Sprague acted improperly in sustaining Board objections to her attempt to get around the Order, it is **denied**.

iii. **Denied.** See Paragraphs 10E(i) and 10E(ii) above.

F. **Denied.** To the extent the Appellant suggests the Board's cases was barred by any statute of limitations, or that the Court of Judicial Discipline erred in finding it was not so barred, it is **denied**.

i. **Denied as stated.** See Paragraph 10E(i) and 10E(ii) above.

ii. **Denied.** It is **denied** that Board witnesses testified *"in direct violation of the Judicial Conduct Board's own Rules of Procedure."*

G. **Denied.** By way of further answer, the Board **denies** that the Board's Complaint was barred by the Doctrine of Laches or by any alleged failure to comply with its own Rules of Procedure. To the contrary, the Appellant was unable to establish any want of due diligence on the part of the Board in conducting its investigation and instituting court action against her. She also could not establish suffering any prejudice.

Outrageously, the Appellant even included in her laches argument a time period from January 2006 until the beginning of April 2006 when the Appellant was voluntarily undergoing psychiatric and psychological testing to address the Board's concern that her conduct was potentially the product of an underlying mental health condition, and as a means of avoiding a Board directive that she submit to such testing with physicians selected by the Board. The Board continued its investigation to permit this testing process to conclude; however, the Appellant then used this to cry foul about the Board's due diligence. The Appellant even included in her laches argument the time from May 2006 until August 2006, when the Appellant's deposition was rescheduled as a professional courtesy three (3) times at her counsel's request before the Appellant then tried to derail it altogether by filing a Motion to Quash Subpoena and to Dismiss Pending Complaints.

H. **Denied.** To the extent the Appellant claims she was denied procedural due process and the right to a fair hearing, it is **denied**.

i. **Denied.** It is denied that the Board violated Rule 3.10. By way of further answer, Rule 3.10 of the Rules of Professional Conduct provides

> A public prosecutor or other governmental lawyer shall not, without prior judicial approval, subpoena an attorney to appear before a grand jury or other tribunal investigating criminal activity in circumstances where the prosecutor or other governmental lawyer seeks to compel the attorney/witness to provide evidence concerning a person who is or has been represented by the attorney/witness. (Emphasis added).

As can readily be discerned, Rule 3.10 is inapplicable to the Appellant's judicial disciplinary case as it applies only to matters before a grand jury or other tribunal investigating **criminal activity**. The Board is neither a criminal investigatory agency, nor did it conduct a criminal investigation of the Appellant. It should be noted the Appellant's issue arises from her habit of employing her law clerks, or former law clerks as is the case with her current counsel, Ronald Santora, Esq., as her counsel in various matters. She previously used law clerk Beth Sindaco, Esq.,[8] to represent her in a personal injury case. The Appellant fails to apprise the Court, however, that none of the interviewed or deposed former law clerk's who served as her counsel on any matter, in whatever capacity it may have been, if any, were questioned about their prior representation in this prosecution.

ii. **Denied.** By way of further answer, Rule 16 of the Judicial Conduct Board Rules of Procedure provides that

> (A) If the Board dismisses a complaint pursuant to Rule 31(A)(1) or (2), the allegations in the complaint shall not be used against the Judicial Officer for any purpose in any other judicial disciplinary or lawyer disciplinary proceeding.

[8] Formerly Beth Boris.

(B) If, within two years of a Board dismissal, additional complaints are filed alleging similar conduct, the Board may direct that the original allegations be reinvestigated.

(C) At any time after a Board dismissal, if it becomes known that the Judicial Officer knowingly made a material misrepresentation of fact, or knowingly concealed evidence or otherwise obstructed a Board investigation, the Board may direct that the allegations in the complaint be reinvestigated.

In 1999, the Board investigated a complaint filed against the Appellant focusing on claims that she had sexually harassed a former law clerk (Beth Boris, Esq.) and that she had engaged in questionable conduct pertaining to the distribution of a fee to her attorneys (Beth Boris, Esq., and Jill Miller, Esq.) representing her as plaintiff in a personal injury case filed in the United States District Court, Eastern District, that settled for $300,000 in 1995 (*Ann Lokuta v. Reginald Laurin & Laidlaw Carriers, Inc.*, 94 Civil 4684). Neither of these allegations were raised or used against the Respondent in the Board's Complaint filed in November 2006 or during her trial.

Nonetheless, because the Appellant made her claim that the Board had used information from the prior investigation, and that she was entitled to depositions taken in the prior investigation from witnesses the Board was using in its new case, the Court reviewed, *in camera*, the deposition transcripts of witnesses Theodore Krohn (former senior law clerk), Susan Weber (former executive secretary and complainant in the Board's new case), and Michael Kostelaba (former junior law clerk), which permitted the Court to ascertain the

substance of the prior complaint investigated. Based upon that review, by Order dated June 29, 2007, the Court denied the Respondent access to the depositions because the Court found the testimony *"neither exculpatory nor relevant to the charges in the Board Complaint."*

iii. **Denied.** See Paragraph 10H(ii) above.

iv. **Denied.** See Paragraph 10H(ii) above.

A. **Denied.** See Paragraph 10H(ii) above.

B. **Denied.** See Paragraph 10H(ii) above.

I. **Denied.** To the extent the Appellant suggests that the Court of Judicial Discipline's denial of her Objection to its Findings of Fact and Conclusions of Law without granting her a hearing was improper, it is **denied**. The Court was not required to grant the Appellant a hearing on her filed Objections, which amply expressed her arguments in 75-pages, on a case whose facts it was well familiar with from 12 days of trial, the longest trial in the Court's history, and which was given great consideration as evidenced by the Court's exhaustive, 225-page majority opinion – the longest ever issued by the Court of Judicial Discipline.

J. **Denied.**

K. This averment is the core of the Appellant's appeal. To the extent the Appellant suggests the Board did not prove its case by clear and convincing, it is **denied**.

L. **Denied.** To the extent the Appellant suggests Judge Sprague could not lawfully preside over her case, it is **denied**. By way of further answer, Rule 701 of the

Pennsylvania Rules of Judicial Administration provides, in relevant part, the following:

> (3) Senior status shall end on the last day of the calendar year in which a magisterial district judge, judge or justice attains age seventy-eight; however, those serving in senior status as of the effective date of this rule who were previously excepted from the age seventy-five limitation pursuant to the amendment of January 1, 1999 may continue to serve until the last day of the calendar year in which they attain age eighty.

It should be noted the Appellant never raised the issue of Judge Sprague's age during any pretrial or trial proceedings. Instead, after her trial, after the Court found she violated the Pennsylvania Constitution and the Code of Judicial Conduct, after her sanction hearing and removal from office, she raised it for the first time in her Motion for Reconsideration. Because the Court of Judicial Discipline is a special tribunal created by constitutional amendment and composed of laypersons, judges, and attorneys, Rule 701 of the Pennsylvania Rules of Judicial Administration logically can have no bearing on the Court's members who do not also serve as judges in either the magisterial, common pleas, commonwealth, superior, or supreme courts of Pennsylvania. Further, the Appellant has never presented any law to support that it does.

M. **Denied.** By way of further answer, on September 24, 2007, Board witness Theodore Krohn, the Appellant's former senior law clerk, in his court testimony brought to the Court's attention an incident wherein the Appellant had directed him to write an opinion favoring one party because the party was a prominent Hazelton family who

had supported her in the election or retention election. Trial Tr. 79-82, September 24, 2007. Because the Board had been unable to identify by name and docket number the case at issue, the Board elected not to charge the serious claim.

Since June 2006, the Appellant was repeatedly apprised of the claim in the Board's Supplemental Notice of Full Investigation, in her deposition, and through discovery materials. In fact, when Krohn raised the claim at trial, the Appellant's counsel, Louis Sinatra, Esq., made known to the Court that they had examined this claim and undertook a search to identify the case referenced to no avail, pronouncing Krohn's testimony about such a case *"totally a fiction."* Id. at 81:2-9, September 24, 2007. When Krohn subsequently identified the case caption and docket number, the Court ultimately permitted the Board to amend its Board Complaint to charge the conduct. The Court of Judicial Discipline could exercise its discretion to permit the amendment under Rule 303 of its Rules of Procedure and did so. The Court considered that the Appellant had been repeatedly advised of the claim and was not deprived of due process. In fact, Krohn was soundly cross examined about the matter and the Appellant testified about it.

N. **Denied.** To the extent the Appellant is alleging such testimony was given or instrumental to the Court's decision, the Board demands that it be identified and the Appellant demonstrate how it was instrumental to the Court's decision.

O. **Denied.**

P. **Denied.** It is **denied** that the sanction imposed was unduly harsh.

6. **Admitted in part.**[9] **Admitted** that the Luzerne County judiciary has been *"disgraced, dishonored, impugned, and seriously undermined"* by the federal investigations and prosecutions. The Appellant, however, must also be included in the list of individuals who have *"disgraced, dishonored, impugned, and seriously undermined"* the Luzerne County judiciary. The newspaper article by Hank Grezlak speaks for itself.

7. **Denied as stated.** By way of further answer, on August 25, 2006, the Board deposed the Appellant, who said nothing about her involvement in a federal investigation. She said nothing about reporting former Judge Conahan, former Judge Ciavarella, former Court Administrator William Sharkey, or Prothonotary Jill Moran to the U.S. Attorney's Office or the FBI. In fact, the Appellant never filed a complaint with the Board about former Judge Conahan or former Judge Ciavarella, despite the fact that she claims to have been a part of the federal investigation. In her pretrial memorandum, she vaguely referenced that she would call "federal investigators" as indicated in Paragraph 7A above and at trial testified about her involvement in a federal investigation as indicated in Paragraph 4 above. The Appellant's prior Application for Relief speaks for itself.

8. **Denied.** To the extent the Appellant is suggesting that former Judge Conahan or Judge Ciavarella exerted influence over any Board witnesses to provide false testimony about her conduct, it is **denied**. It is further **denied** that the Appellant was

[9] It should be noted that Paragraph 6, as listed at this point in the Appellant's Application, is actually Paragraph 11.

"a lone voice crying out in the Judicial wilderness." The Appellant grants herself too much credit. As recently reported in The Scranton Times-Tribune, current Luzerne County President Judge Chester B. Muroski "revealed for the first time Tuesday that he cooperated with federal agents probing corruption at the county courthouse in 2006." *Muroski Admits He Aided Feds' Probe*, The Scranton Times-Tribune, March 4, 2009 (A true and correct copy of the article *Muroski Admits He Aided Feds' Probe*, The Scranton Times-Tribune, March 4, 2009 is attached as Board Exhibit "A"). In fact, the article reported that Judge Muroski's revelation was made in reaction to the Appellant's pending Application:

> Judge Muroski made the revelation in reaction to a legal document filed Tuesday by former Judge Ann H. Lokuta that alleged Judge Muroski backed out of participating in a county controller's investigation into the juvenile detention center at the heart of the corruption probe in 2005

Id. The Appellant was hardly the *"lone voice crying out in the Judicial wilderness,"* but more accurately, the lone judicial voice promoting her involvement for public consumption.

A. **Denied.** By way of further answer, there is no evidence to support this contention and it is **denied**.

B. **Denied.** By way of further answer, the Appellant's notion of Judge Conahan masterminding a conspiracy against her composed of Board witnesses who testified about incidents of

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For ease of comparison of the Board's Answer to the Appellant's Application, the Board will follow the erroneous

her misconduct, and her attempt to graft into her case the federal investigation of unrelated criminal conduct as supporting her notion, or, as she has previously described it, as constituting "exculpatory evidence," is absurd and has no foundation in reality. It is a desperate attempt to impugn evidence provided by numerous witnesses, both male and female, covering numerous court departments and positions, about her abusive behavior which she could not refute or explain with any credibility. It is **denied** that without the testimony of these witnesses, the outcome of her trial would have been different. To conclude this is to discount the vast majority of evidence and conclude that evidence from witnesses without lofty titles had lesser value to the Court of Judicial Discipline.

C. **Denied.**

9. **Denied.** By way of further answer, to grant the Appellant the relief requested would be to repudiate the testimony of numerous witnesses and validate a far-fetched, unproven, incredible notion of conspiracy injected into the proceedings as a defense to conduct the Appellant could not credibly explain away. Essentially, the Appellant wants the Court to retroactively apply to her case pleas and/or future convictions for unrelated criminal conduct qualifying as *crimen falsi* to reassess the credibility of

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numbering.

those witnesses charged by the federal authorities. If this were permitted as a basis to overturn a trial and verdict, no case would have any surety of finality as a defendant would simply demand a new trial once they learned a testifying prosecution witness was subsequently (post-trial and post-verdict) convicted of an unrelated criminal offense qualifying as *crimen falsi*. The Appellant cites no authority for this novel proposition inherent in her argument. At the same time, the Appellant cites no authority for overturning the Court of Judicial Discipline's decision, one joined in the majority by five (5) judges (Judge Richard Sprague, Judge John Musmanno, Judge William Lamb, Judge William Bucci, and Judge Stewart Kurtz).

The Appellant had her day in court in what became the longest trial presided over by the Court of Judicial Discipline, and afterward, a lengthy sanction hearing where she presented 19 witnesses and spoke on her own behalf. The Appellant was accorded fairness, courtesy, and ample opportunity to present her defense, and at the sanction hearing, to show her remorse and contrition. She showed none and continued to maintain the position that Board witnesses were lying conspirators. The Appellant presents no justifiable reason for this Court to permit her to relitigate her case and vacate the Court of Judicial Discipline's decision.

10. **Admitted in part, denied in part. Admitted** that the Appellant's vacant seat will be placed on the ballet in the primary and general 2009 elections. It is **denied** that the Appellant has justified the granting of her Application by making a strong showing that she is likely to prevail on the merits of her appeal, or that the issuance of the stay

will not substantially harm other interested parties, or adversely affect the public interest. *Pennsylvania Pub. Util. Com'n v. Process Gas Consumers Group*, 502 Pa. 545, 552-554, 467 A.2d 805, 808-809 (1983).

11. **Denied.** To the extent the Appellant glosses over her failure to first seek relief from the Court of Judicial Discipline by stating it would be "*fruitless and/or impractical,*" it is **denied**. The determination of whether or not to grant a stay or supersedeas entails balancing of four factors, not just the Appellant's likelihood of prevailing on the merits of her appeal. Therefore, regardless of the Court of Judicial Discipline's decision that the Appellant had violated the Pennsylvania Constitution and the Code of Judicial Conduct, or any belief by the Appellant that the Court might be predisposed to find she could not make a strong showing that she was likely to prevail on the merits of her appeal, it still had to balance other competing factors, which it could have determined weighed in favor of granting a stay.

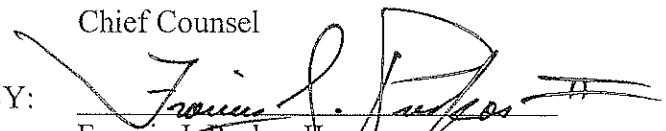
12. **Admitted.**

13. **Admitted.** By way of further answer, when the Supreme Court has established the law governing its determination of whether or not to grant a stay or supersedeas, the Appellant must adhere to it and satisfy that law in order to prevail in its request. The Board **denies** that she has done so.

WHEREFORE, the Board, by and through Francis J. Puskas II, Deputy Chief Counsel, objects to the Appellant's Application for Supersedeas, Stay, and Extraordinary Relief and respectfully requests that it be denied.

Respectfully submitted,

JOSEPH A. MASSA, JR.
Chief Counsel

BY: 

DATE: March 9, 2009

Francis J. Puskas II
Deputy Chief Counsel
Pa. Supreme Court ID No. 76540
Judicial Conduct Board
301 Chestnut Street, Suite 403
Harrisburg, PA 17101
(717) 234-7911

IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

In re:	:	
	:	
Ann H. Lokuta	:	
Former Judge of the Court of	:	No. 26 MM 2009
Common Pleas	:	
11th Judicial District	:	
Luzerne County	:	

VERIFICATION

I, Francis J. Puskas II, Deputy Chief Counsel to the Commonwealth of Pennsylvania Judicial Conduct Board, verify that I am authorized to make this verification on behalf of the Plaintiff and that the statements made in the foregoing Judicial Conduct Board's Answer and to the Appellant's Application for Supersedeas, Stay, and Extraordinary Relief, are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa. Cons. Stat. Ann. §4904, relating to unsworn falsification to authorities.

Respectfully submitted,

DATE: March 9, 2009

Francis J. Puskas II
Deputy Chief Counsel
Pa. Supreme Court ID No. 76540

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The Times-Tribune.com

News

Muroski admits he aided feds' Luzerne courtprobe

Print Page

Muroski admits he aided feds' probe

Published: Wednesday, March 4, 2009 6:05 AM EST

WILKES-BARRE — Luzerne County President Judge Chester B. Muroski revealed for the first time Tuesday that he cooperated with federal agents probing corruption at the county courthouse in 2006.

Judge Muroski made the revelation in reaction to a legal document filed Tuesday by former judge Ann H. Lokuta that alleged Judge Muroski backed out of participating in a county controller's investigation into the juvenile detention center at the heart of the corruption probe in 2005.

In the document, Ms. Lokuta's attorney said Judge Muroski backed out because then-President Judge Michael T. Conahan appropriated $30,000 to fix up Judge Muroski's new chambers.

Judge Muroski said he didn't participate in the county investigation on the advice of counsel.

But he said he did contact the U.S. Attorney's office through intermediaries and was interviewed twice by the FBI.

Luzerne ends use of halfway house

WILKES-BARRE — The owner of the halfway house ensnarled in the discovery last month of former President Judge Mark A. Ciavarella Jr.'s controversial sentencing practices, remained optimistic Tuesday his facility would continue to be used as transitional housing for certain segments of the Luzerne County prison population.

"(The judges) are making the decisions, and I know that they'll do the right thing," Jim Casey, the owner and operator of Crossing Over, said. "Whatever is going on, you definitely have to stop the old; and the old was dysfunctional."

The eight active members of the Luzerne County judiciary elected Tuesday to "phase out" the practice of referring Luzerne County Correctional Facility inmates to the facility on South Main Street. Court officials will explore other options for transitional housing, President Judge Chester B. Muroski said.

For more on the Luzerne judges scandal, visit www.citizensvoice.com/judges/

[x] Close Window

Board Exhibit "A"

IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

In re:	:	
	:	
Ann H. Lokuta	:	
Former Judge of the Court of	:	No. 26 MM 2009
Common Pleas	:	
11th Judicial District	:	
Luzerne County	:	

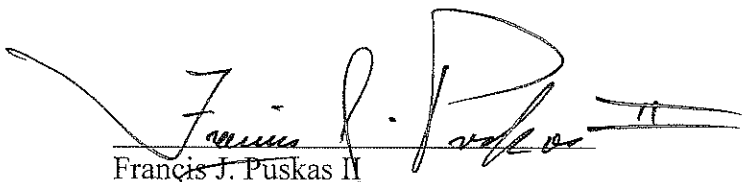
PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by first class mail addressed as follows:

Ronald V. Santora, Esq.
Bresset & Santora, LLC
1188 Wyoming Avenue
Forty Fort, PA 18704-4016

Respectfully submitted,



DATE: March 9, 2009

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