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OF THE
SUPREME COURT OF PENNSYLVANIA

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January 20, 2016

VIA FEDERAL EXPRESS
Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219

Attention: John A. Vaskov, Esquire
Deputy Prothonotary

RE: In re: KATHLEEN GRANAHAN KANE, Petitioner
No. 3 WM 2016
Intermediate Court Docket

Dear Mr. Vaskov:

Enclosed please find for filing an unbound original and one bound copy of Office of Disciplinary Counsel's Answer to Kathleen Granahan Kane's Application for Extraordinary Relief, with Exhibits and Certificate of Service. The Answer is being electronically filed today through the PACFile system. I certify that I am providing copies of this letter and the Answer to individuals as indicated below.

Very truly yours,

Paul J. Killion
Chief Disciplinary Counsel

PJK:deg
Enclosures
cc: Paul J. Burgoyne, Deputy Chief Disciplinary Counsel
Harriet R. Brumberg, Disciplinary Counsel
James F. Mundy, III, Esquire, Counsel for Petitioner
Elaine M. Bixler, Secretary, The Disciplinary Board

IN THE SUPREME COURT OF PENNSYLVANIA

In re KATHLEEN GRANAHAN KANE, Petitioner : INTERMEDIATE COURT DOCKET
: No. 3 WM 2016

OFFICE OF DISCIPLINARY COUNSEL'S ANSWER TO KATHLEEN GRANAHAN KANE'S APPLICATION FOR EXTRAORDINARY RELIEF

Office of Disciplinary Counsel (ODC), by Harriet R. Brumberg, Disciplinary Counsel, and Paul J. Killion, Chief Disciplinary Counsel, respectfully submits this Answer to Kathleen Granahan Kane's Application for Extraordinary Relief, and in support thereof states:

I. BACKGROUND

In February 2013, shortly after Kathleen Granahan Kane (Petitioner) was sworn in as the Attorney General, Petitioner hired a special prosecutor, H. Geoffrey Moulton, Jr., Esquire, to review her predecessor's handling of the Jerry Sandusky investigation. (Exhibit A) As a byproduct of the investigation, the special prosecutor discovered that state judges, government employees, and private attorneys had exchanged colorably pornographic, racist, and sexist emails over state e-mail accounts. (*See* Exhibit B)

In or around October 2014, then Chief Justice Ronald D. Castille requested that Petitioner provide him with the names of any judges who had exchanged such problematic emails. (Exhibit C) At about the same time, Justice J.

Michael Eakin self-reported his involvement with the emails. (Exhibit C) The Court retained a special counsel, Robert Byer, Esquire, to examine the emails provided by Petitioner and to draft a report of his findings. (Exhibit D) Petitioner also provided the Judicial Conduct Board (JCB) with copies of the emails discovered by the Office of Attorney General (OAG). (Exhibit E)

On December 19, 2014, Mr. Byer issued a report, which detailed his examination of more than 1,000 emails that were sent to Justice Eakin's work account and private email account under the name of "John Smith." (Exhibit D) Mr. Byer concluded that with the exception of one email Justice Eakin had received with "offensive sexual content," Justice Eakin's emails were unremarkable. (Exhibits D, E) In late 2014, the JCB completed its investigation and found that Justice Eakin had received about 50 "mildly pornographic" emails. The JCB concluded that the emails were no worse than what "appears commonly in Playboy" and dismissed its complaint against Justice Eakin. (Exhibit E) First Deputy Attorney General Bruce Beemer, who also reviewed the emails sent to the Court and the JCB, agreed with the Court's and the JCB's assessment. (Exhibit F) Hence, all pending

investigations of Justice Eakin's emails had been completed and dismissed by January 1, 2015.

On August 25, 2015, ODC filed with the Court a Petition for Emergency Temporary Suspension (ETS petition) against Petitioner herein. ***Office of Disciplinary Counsel v. Kathleen Granahan Kane,*** No. 2202 Disciplinary Docket No. 3, Board File No. C1-15-558 (Pa. 2015). ODC's ETS petition alleged that Petitioner had engaged in egregious misconduct in violation of the Rules of Professional Conduct and that Petitioner's misconduct had caused and will continue to cause immediate and substantial public and private harm. ODC's ETS petition sought the immediate, temporary suspension of Petitioner's law license.

On August 28, 2015, upon consideration of ODC's ETS petition, this Court entered a Rule upon Petitioner "to show cause why she should not be placed on temporary suspension." On September 4, 2015, Petitioner filed an Answer disputing ODC's allegations of her misconduct. On September 14, 2015, ODC filed its Reply to Petitioner's Answer. Thereafter, on September 21, 2015, following this Court's consideration of the responses to the Rule to Show Cause, the Court entered a unanimous, *Per Curiam* Order

making the Rule absolute and placing Petitioner on temporary suspension.

On October 1, 2015, Petitioner renewed her accusation that Justice Eakin had exchanged emails that contained "racial, misogynistic pornography." (Exhibit F) Then on October 22, 2015, the first full day after the effective date of Petitioner's temporary suspension, Petitioner released additional emails sent and received by Justice Eakin. (Exhibit F). On December 22, 2015, the Court of Judicial Discipline placed Justice Eakin on interim suspension, having found that Justice Eakin had engaged in pattern of sending and receiving offensive emails. (Exhibit G)

Now, almost four months after the entry of this Court's September 21, 2015 Order, Petitioner files an Application for Extraordinary Relief claiming that Justice Eakin was biased against her because she revealed that he had sent and received emails with sexist, racist, and otherwise offensive content. (Exhibit H) According to Petitioner, Justice Eakin's participation in the consideration of ODC's ETS petition denied her due process rights and tainted the other four members of the Court.

Petitioner requests that this Court vacate its Order placing her on temporary suspension and reinstate her privilege to practice law in this Commonwealth.

II. SUMMARY OF THE BASIC POSITION OF OFFICE OF DISCIPLINARY COUNSEL.

By Petitioner's failing to challenge Justice Eakin's participation in the consideration of the ETS petition at the earliest possible moment, Petitioner has knowingly waived her claim of bias. Moreover, at this late juncture, Petitioner is unable to make a record and meet her heavy burden of proof of judicial bias so as to overcome the strong presumption that a sworn jurist will be impartial. In any event, this Court and the attorney discipline system have afforded Petitioner a full array of due process, which included notice and opportunity to be heard, in reaching its decision that Petitioner's egregious misconduct merits the immediate suspension of her law license. Petitioner also continues to have due process rights under the Rules of Disciplinary Enforcement, including the right to seek dissolution of this Court's temporary suspension order or to request a hearing, should she want to pursue them. In sum, the Court's *Per Curiam* Order, entered by a unanimous Court, should not be disturbed.

III. ARGUMENT

A. PETITIONER KNOWINGLY WAIVED HER OBJECTION TO JUSTICE EAKIN'S PARTICIPATION IN THE ADJUDICATION OF ODC'S PETITION FOR EMERGENCY TEMPORARY SUSPENSION.

Petitioner argues that this Court's unanimous, *Per Curiam* Order of September 21, 2015 temporarily suspending her from the practice of law must be vacated because of Justice Eakin's participation in the entry of that Order. Petitioner reasons that Justice Eakin should have recused himself from "participat[ing] in this decision knowing that it was Petitioner who had discovered evidence of email traffic on servers in the Office of Attorney General (OAG) emanating from and sent to Justice Eakin's Yahoo email account." Petition at p. 5. Petitioner has long-since waived any objection to Justice Eakin's recusal, having knowingly failed to request his recusal at the earliest possible moment.

In Pennsylvania, a party to an action has the right to request the recusal of a jurist when the party has a reason to question the impartiality of the jurist. ***Goodheart v. Casey,*** 523 Pa. 188, 198, 565 A.2d 757, 762 (1989) (citations omitted). But the right to request a jurist's recusal must be made timely. "The case law in this

Commonwealth is clear and long standing: it requires a party seeking recusal or disqualification to raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred." *Id.* at 199, 565 A.2d at 763, *citing* ***Reilly by Reilly v. Septa***, 507 Pa. 204, 489 A.2d 1291 (1985).

As a matter of finality and fairness, "[o]nce the trial is completed with the entry of a verdict, a party is deemed to have waived his right to have a judge disqualified, and if he has waived that issue, he cannot be heard to complain following an unfavorable result." *Cf.* ***Reilly***, 507 Pa. at 222, 489 A.2d at 1300. *See also cf.* ***Ware v. U.S. Fidelity & Guaranty Company***, 395 Pa. Super. 501, 506, 577 A.2d 902 (1990) (a party may not raise the issue of judicial bias for the first time in post-trial proceedings). Furthermore, where the jurist's possible bias is known to a party and that party fails to promptly alert the jurist of that fact, the objection is waived and the party may not offer the objection as a basis to invalidate the judgment. ***Goodheart***, 523 Pa. at 200, 565 A.2d at 763 (citations omitted).

On August 25, 2015, ODC filed its ETS petition; on September 4, 2015, Petitioner filed her Answer. *Nowhere* in Petitioner's counseled Answer did Petitioner request Justice Eakin's recusal, despite Petitioner's having referred his emails to other government entities for investigation in October 2014. On September 21, 2015, the Court granted ODC's ETS petition and entered a unanimous *Per Curiam* Order placing Petitioner on temporary suspension.

Although this Court's Order suspending Petitioner from the practice of law became effective on October 22, 2015, only now does Petitioner seek to challenge Justice Eakin's participation in the consideration of the ETS petition. Petitioner failed to raise the issue of Justice Eakin's recusal at the earliest possible moment: when the ETS Petition was filed and pending before the Court. Accordingly, Petitioner has waived her right to challenge this Court's final Order through this Application for Extraordinary Relief. *See* ***Goodheart***, 523 Pa. at 199, 565 A.2d at 763.

Justice Eakin's possible bias was well-known to Petitioner since at least October 2014. (Exhibit C)

Indeed, Petitioner repeatedly touts the role she played in the release of Justice Eakin's emails. *See, e.g.*, Petition at pp. 2, 3, 4, 5, 7, 9. If Petitioner sincerely believed that her release of Justice Eakin's emails would have biased the jurist against her, then logic dictates that Petitioner would have raised this impediment to Justice Eakin's consideration of the ETS petition at the time ODC had filed it. Instead, Petitioner filed her Application for Special Relief (Petition) on January 11, 2016,[1] the day before the Special Committee on Senate Address scheduled hearings on Petitioner's removal from office based on her current ineligibility to practice law.[2] Not only has Petitioner knowingly waived her current objection to Justice Eakin's participation, her belated assertion of bias is lacking in sincerity.

This Court has "long recognized that under our tradition it has been a cardinal rule that 'the law will

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[1] Petitioner's initial pleading, filed on January 11, 2016, was rejected by the Court; on January 12, 2016, Petitioner filed an amended pleading, which was accepted by the Court.

[2] Petitioner's attorney emailed a copy of Petitioner's Application directly to each of the Justices. It was reported in the press that Petitioner's attorney had hoped to receive a decision on the Petition from this Court before 1:00 p.m. on January 12, 2016, when the Senate Committee was scheduled to hold its final hearing on Petitioner's removal. (Exhibit H)

not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea.'" ***Goodheart***, 523 Pa. at 200, 565 A.2d at 763, *quoting* 3 W. Blackstone, **Commentaries** 361. Therefore, a party who asserts that a jurist should be disqualified bears the burden of producing evidence to establish that the jurist is biased, prejudiced, or unfair necessitating his or her recusal. ***Commonwealth v. Whitmore***, 590 Pa. 376, 388, 912 A.2d 827, 834 (2006), *citing* ***Commonwealth v. Darush***, 501 Pa. 15, 459 A.2d 727, 731 (1983). The party requesting disqualification must present evidence that raises a "substantial doubt" as to the jurist's ability to proceed impartially. ***In re Bridgeport Fire Litigation***, 5 A.3d 1250, 1254 (Pa. Super. 2010), *citing* ***Commonwealth v. White***, 589 Pa. 642, 910 A.2d 648, 657 (2006).

As a result of Petitioner's failure to file a motion for recusal at the earliest possible time, it is now impossible for Petitioner to meet her heavy burden of proof as there is **no record** for this Court to review. Had Petitioner filed a timely motion for Justice Eakin's recusal when ODC's ETS petition was before the Court, this

would have allowed Justice Eakin "to state his [ ] reasons for granting or denying the motion and, as the allegedly biased party, to develop a record on the matter." ***Commonwealth v. Whitmore***, 590 Pa. at 386, 912 A.2d at 833. Petitioner's feeble supposition that "[t]here can be no question that there was at least a temptation presented to Justice Eakin by his participation in the licensure determination of Petitioner" (Petition at p. 9) lacks the heft needed to vacate this Court's Order. *See* ***Commonwealth v. Whitmore*** (where a trial judge had not made a ruling concerning his recusal because he was never asked to so rule, an appellate court is without power to remove the trial judge from the case).

The Code of Judicial Conduct, Canon 2.11(A)(1) (previously Canon 3(C)(1)), requires a judge to disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including circumstances when a judge has a personal bias concerning a party.[3] There is a corollary presumption that a judge has the ability to conduct a self-assessment and determine

[3] Comment [2] to Rule 2.11 explains that regardless of whether a motion to disqualify is filed, the Rule obligates a judge not to decide matters where "disqualification is required."

whether he has a "direct, personal, substantial, [and] pecuniary" interest in a matter that would require him to voluntarily recuse himself. ***In re Bridgeport Fire Litigation***, 5 A.3d at 1254, *citing* ***Commonwealth v. Druce***, 577 Pa. 581, 848 A.2d 104, 108 (2004).

Justice Eakin, who has been on this Court since 2001, had previously undertaken such a self-assessment in a related matter and recused himself from the Court's consideration of Justice Seamus P. McCaffery's suspension. (Exhibit C) At the time ODC filed its ETS petition in August 2015, all outstanding investigations regarding Justice Eakin's emails had been completed and resolved. (Exhibits D, E) Thus, the fact that Petitioner had disclosed Justice Eakin's emails in October 2014 would not have mandated a self-assessment that would *ipso facto* have resulted in Justice Eakin's disqualification from consideration of ODC's ETS petition.[4]

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[4] In his recent testimony before the Court of Judicial Discipline, Justice Eakin revealed that he routinely performs such a self-assessment and introduced evidence that his judicial opinions are free of improper bias. Even the Court of Judicial Discipline noted that irrespective of Justice Eakin's emails, "[n]o party has yet argued to this Court that such improper bias exists." ***In re: J. Michael Eakin, Justice of the Supreme Court of Pennsylvania***, No. 13 JD 15, ¶ 14 (December 22, 2015).

Finally, the gravamen of the Petition is that Justice Eakin should not have participated "in a process which had the potential of removing the Petitioner from her office and thus preventing further exposure of Justice Eakin's emails." Petition at p. 5. It is important to note that the Court's carefully sculpted Order did neither. While the Court's Order temporarily suspended Petitioner from the practice of law, it did not remove her from the Office of Attorney General or prevent her from releasing additional emails.

B. PETITIONER WAS AFFORDED FULL DUE PROCESS OF LAW.

Petitioner boldly asserts that this Court's September 21, 2015 *Per Curiam* Order temporarily suspending her from the practice of law was entered "without affording the Attorney General any form of Due Process." Petition at p. 2. Not only is Petitioner's assertion an affront to both this Court and the attorney discipline system, it is totally groundless. Consistent with the Rules of Disciplinary Enforcement and the rules of this Court, Petitioner was afforded notice and an opportunity to be heard on the issue of her immediate temporary suspension.

Pursuant to Pa.R.D.E. 208(f)(1), on August 25, 2015, ODC filed the ETS petition with the Court and served a copy of its petition on Petitioner herein, thereby providing Petitioner with written notice of the charges. Following the Court's consideration of ODC's petition, the Court entered a Rule to Show Cause on August 28, 2015, thereby providing Respondent with an opportunity to state her position regarding the immediate suspension of her law license. Thereafter, on September 4, 2015, Petitioner filed an Answer to ODC's ETS petition, fully setting forth her position that her license should not be temporarily suspended. On September 14, 2015, ODC filed a response to Petitioner's Answer; Petitioner did not file any additional pleading, as was her choice. Finally, one week later, following full deliberation of the pleadings, the Court entered a tailored order temporarily suspending Petitioner from the practice of law in Pennsylvania. Thus, as the above rendition of facts objectively demonstrates, Petitioner was afforded her full due process rights in the temporary suspension of her law license.

Notably, the Rules of Disciplinary Enforcement provide Petitioner with additional due process rights should she

wish to avail herself of them. Pursuant to Pa.R.D.E. 208(f)(4), Petitioner could have petitioned and still can petition the Court for the dissolution or amendment of her temporary suspension; pursuant to Pa.R.D.E. 208(f)(6), Petitioner could have requested and still can request the accelerated disposition of her charges and have a hearing.

In sum, this Court and the attorney discipline system provide and have provided Petitioner with a full array of due process.

C. JUSTICE EAKIN'S PARTICIPATION DID NOT TAINT THE FULL COURT.

Petitioner maintains that the September 21, 2015 *Per Curiam* Order entered by the five members of this Court was "incurably tainted" as a result of Justice Eakin's participation. In the event that this Court considers the issue of the propriety of Justice Eakin's participation, it should not conclude that Justice Eakin poisoned the remaining members of the Court. Indeed, there is no evidence to suggest that the members of this Court failed to individually review the pleadings and exercise independent judgment in entering its *Per Curiam* Order in accordance with established appellate protocol. The

Court's unanimous September 21, 2015 Order should not be disturbed.

This Court has specifically addressed the issue of the appropriate remedy in the event that a member of an appellate panel is subject to disqualification due to self-interest. In ***Goodheart v. Casey,*** 521 Pa. 316, 555 A.2d 1210 (1989)(***Goodheart I***), the Court considered an action challenging the constitutionality of a statute that reduced public retirement benefits for judges entering service after 1974. Two members of the Supreme Court, who could be considered "interested" in the outcome of the case, had participated in a decision finding the statute unconstitutional. No objection was made to the two justices' participation until after the appeal had been decided.

Subsequently, the Court received applications for reconsideration raising, among other issues, the propriety of two members of the Court participating in the decision in ***Goodheart I***. In deciding whether the participation of the two justices in ***Goodheart I*** tainted the decision of the full Court, the Court first found that the two "interested" justices had neither provided the decisive votes for the

result nor authored the Court's opinion in the matter. ***Goodheart***, 523 Pa. at 197, 565 A.2d at 761-762. Next, the Court found that since the vote on the decision was six-to-one in favor of the "interested" justices, the participation of the "interested" justices did not change the final result. *Id.* at 197, 565 A.2d at 762. The Court then reasoned that it was "appropriate to view the participation of the 'interested' justices . . . as 'mere surplusage'" and concluded that the "vacating of the judgment rendered would be entirely inappropriate in this context." *Id.* *Compare* ***Aetna Life Insurance Co. v. Lavoie***, 474 U.S. 813 (1986)(Supreme Court vacated an appellate decision where the interested panel member had cast the deciding vote and authored the majority opinion).

In the instant matter, the five members of the Court participated in the entry of the unanimous September 21, 2015 *Per Curiam* Order. Justice Eakin neither cast the deciding vote nor authored the final Order. To the extent that this Court finds that Justice Eakin should not have participated in the consideration of ODC's ETS petition, Justice Eakin's participation was "mere surplusage." For

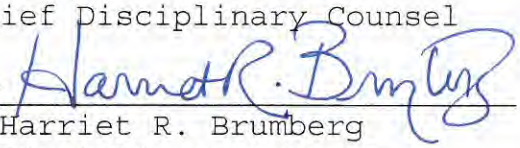
this additional reason, the meritless Petition should be rejected outright.

WHEREFORE, ODC respectfully requests that this Court deny Petitioner's Application for Extraordinary Relief.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion
Chief Disciplinary Counsel

By 

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IN THE SUPREME COURT OF PENNSYLVANIA

In re KATHLEEN GRANAHAN KANE, : INTERMEDIATE COURT DOCKET
Petitioner :
: No. 3 WM 2016

ORDER

PER CURIAM:

AND NOW, this day of , 2016, upon consideration of Petitioner's Application for Extraordinary Relief and Office of Disciplinary Counsel's Answer thereto, it is hereby ORDERED that Petitioner's Application is denied.

BY THE COURT:

_____ J.

VERIFIED STATEMENT

I, Harriet R. Brumberg, Disciplinary Counsel, state under the penalties provided in 18 Pa.C.S. §4904 (unsworn falsification to authorities), that:

I am a Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania assigned to prosecute this matter pursuant to the Pennsylvania Rules of Disciplinary Enforcement;

I am authorized to make this verified statement;

The facts contained in the attached Answer to Petitioner's Application for Extraordinary Relief are true and correct to the best of my knowledge, information and belief; and

The attached Exhibits referenced in the attached Petition are, to the best of my knowledge, information, and belief, true and correct copies of the sources cited therein.

1/20/2016
Date

Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

EXHIBITS

Jerry Sandusky investigation: Pa. attorney general names special prosecutor to review the case

[http://connect.pennlive.com/staff/chthomps/index.html] By Charles Thompson | cthompson@pennlive.com
[http://connect.pennlive.com/staff/chthomps/posts.html]
Email the author | Follow on Twitter [https://twitter.com/ChasThompson1]
on February 04, 2013 at 2:22 PM, updated February 04, 2013 at 11:20 PM

A former federal prosecutor has been named to head Pennsylvania Attorney Kathleen Kane's long-promised review of the **Jerry Sandusky [http://www.pennlive.com/jerry-sandusky/]** child sex abuse investigation.

H. Geoffrey Moulton Jr., an associate professor at Widener University School of Law and a one-time first assistant in the U.S. Attorney's office in Philadelphia, will oversee the review.

As special investigator, Moulton in 1993 led a widely-praised investigation into the controversial federal raid on the Branch Davidian compound near Waco, Texas, for the U.S. Treasury Department, which has oversight of the federal Bureau of Alcohol, Tobacco and Firearms.

Kane, **in a press release issued this afternoon [http://www.attorneygeneral.gov/press.aspx?id=6806]** , said Moulton will report directly to her and when his work is complete, "my office will make these findings available to the public."

The appointment signals the start of work on one of Kane's central campaign promises to voters last year: Finding out why the investigation into the former Penn State defensive coordinator sexual predations took more than two-and-a-half years to complete.

Kane promised "a comprehensive and independent examination of the facts surrounding the handling of the Sandusky investigation," and the former Lackawanna County assistant district attorney rode that pledge to the first-ever victory by a Democrat since the attorney general's office became an elective office in 1980.

Sandusky, the longtime defensive coordinator for Joe Paterno, was convicted in June of molesting 10 boys over a 14-year period and sentenced to a minimum of 30 years in prison. There has been no evidence that any new victims were preyed upon during the course of the state investigation.

The conviction itself has already withstood a first round of appeals, and even harsh critics of the investigation's timing make clear they are not defending Sandusky.

But in Pennsylvania, there may be a psychological need to do this.

The scandal abruptly ended Paterno's legendary career, unjustly in the eyes of many Paterno loyalists; and it ultimately set the revered Penn State football program up for NCAA punishments including a four-year ban on post-season play.

A poll conducted by Quinnipiac University last month showed 50 percent of respondents disapprove of Gov. Tom Corbett's handling of the "Penn State situation over the past few years," as compared to just 26 percent who approve.

That "handling," of course, would include the start-up of the Sandusky investigation in 2009 under then-Attorney General Corbett, who was simultaneously in the early stages of preparing to run for governor in 2010.

Sandusky was charged in November 2011.

Some suggest that Corbett or his allies managed the delicate child sex investigation so that it would not break in the middle of the

Exhibit A

2010 gubernatorial campaign, a suggestion that Kane exploited to great advantage in her own race last year.

The new inquiry, Kane has said, will look at, among other things: Whether enough agents and investigators were dedicated to the investigation at the start? Why Sandusky wasn't arrested after the first credible case was built? Why Corbett's staff took the case before a grand jury? Did campaign contributions from board members of The Second Mile, Sandusky's youth charity, influence matters?

It is a highwire act for both main characters.

Corbett has been steadfast in his denials of playing politics with the probe, and several agents and investigators who worked the case have backed that up publicly and privately.

They've said that proving a continuous course of conduct against Sandusky was their best strategy for winning the case, and that using the grand jury was a sound strategic call that let them to build that case through a series of often reluctant victims.

Corbett has said he will talk to Kane, as long as he believes the investigation is proceeding fairly.

Even so, "Nobody wants to have these types of questions hanging over them as they are about to put a campaign together," noted Muhlenberg College political science professor Chris Borick, referring to Corbett's expected run for a second term next year.

For Kane and her special deputy, meanwhile, there's the need to strike a careful balance between exploring the open questions deeply enough to satisfy the skeptics that there's been an independent review without being perceived as conducting a political witchhunt.

Kane's supporters and staffers say there are no preconceived notions about the outcome of the review.

"The reality is there are legitimate questions that people all over the state have been asking for months, and they have a right to know the facts," Mellody said last week.

Former Acting Attorney General Walter Cohen noted this week the special deputy, at the start, will likely be relying primarily on the cooperation and good will of the Sandusky investigators, many of whom have since retired or left the AG's office during the transition.

Kane's investigator would not have the power to compel testimony before the grand jury, for example, without seeking specific approval to start a case from the grand jury's supervising judge, Cohen said.

If extreme wrongdoing is found, Kane has left herself the latitude to take that direction.

But that is a decision for another day.

Kane herself told The New York Times last week she will accept whatever conclusion the special prosecutor reaches. "I am not afraid of at the very end, after every stone has been turned, to tell everyone: 'Nothing went wrong here,'" the newspaper quoted her as saying.

Kane's addiction

File

Inquirer Editorial Board

POSTED: Thursday, October 8, 2015, 1:08 AM

The Inquirer

For a woman who purports to be dismayed and appalled by it, Kathleen Kane has a surprisingly intimate relationship with pornography. In fact, the attorney general has made the genre the deliberate focus of her administration for more than a year. If Kane is remembered as anything other than an ostensible law enforcer who undermined criminal investigations while accruing criminal charges, it will be as Pennsylvania's porn prosecutor.

Since Kane accidentally uncovered thousands of pornographic and offensive emails exchanged by prosecutors, judges, and other officials, their disclosure has been advocated by, among others, a governor, a chief justice, The Inquirer, and Kane herself. And yet the Democratic attorney general has repeatedly found herself unable to let go of the porn, fighting its release in court and opting instead for a peep-show policy of strategic revelations that divert

Exhibit B

attention from her alleged misdeeds while punishing her enemies.

Kane's habit started last year, around the time The Inquirer reported that a special prosecutor was looking into whether she illegally leaked confidential grand jury information to smear her nemesis Frank Fina, a top deputy to her Republican predecessor Tom Corbett. Shortly thereafter, Kane released her first fusillade of dirty emails linked to top officials in the Corbett administration - while refusing to release those linked to scores of other state officials, including her subordinates.

She used pornography again in August, when a trove connected to Fina and another former state prosecutor was released soon after Kane was charged with perjury and other crimes in the grand jury leak. Last week, after she was charged with additional counts and the state Supreme Court suspended her law license, she dropped another smut bomb said to be connected to high court Justice J. Michael Eakin.

The emails, which have already appropriately ended the political careers of several ranking officials, are of legitimate public concern. They suggest rampant misogyny, bigotry, and idiocy among public officials, as well as unethical fraternization among judges and prosecutors. The trouble is that by misusing the evidence as revenge porn, Kane has diminished this issue almost as thoroughly as she has tarnished her office.

The courts or an impartial executive authority - such as a special prosecutor, the auditor general, or the Open Records Office - should put a merciful stop to Kane's striptease by forcing a systematic, wholesale release of the emails. Meanwhile, an independent investigation must determine appropriate administrative or criminal penalties for any misuse of state resources by the emailers.

Of course, one agency that can't conduct an objective investigation is the Attorney General's Office. For that and other reasons, the legislature and Gov. Wolf must act to remove Kane from office and relieve her of the power to misuse the state's top law enforcement agency for her own perverse purposes.

Inquirer Editorial Board

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Porn email scandal results in suspension of Supreme Court Justice Seamus McCaffery

Pennsylvania's porn scandal sparked by a state Attorney General's Office probe has ensnared Justices Seamus P. McCaffery, top left, and J. Michael Eakin, lower right, seen on Sept. 13, 2011. *(AP File Photo)*

[http://connect.pennlive.com/staff/chthomps/index.html] By Charles Thompson | cthompson@pennlive.com
[http://connect.pennlive.com/staff/chthomps/posts.html]
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on October 20, 2014 at 11:07 PM, updated October 21, 2014 at 7:21 AM

Pennsylvania Supreme Court Justice Seamus P. McCaffery was suspended with pay Monday by a 4-1 vote of his court colleagues.

He becomes the latest in a sad parade of high-ranking state officials, and the first judge, to be forced from office for participating in an apparently **longstanding, friends-only pornographic email ring [http://topics.pennlive.com/tag/state-email-investigation/posts.html]** centered in the Tom Corbett-era Attorney General's office.

McCaffery, 64 and a member of the high court since 2008, was placed on an immediate suspension by his colleagues, who also tasked the state's Judicial Conduct Board with determining within 30 days whether formal charges of violating the state's Rules of Judicial Conduct should ensue.

If the board brings changes, that would lead to a trial before the state's Court of Judicial Discipline. With a conviction, that court could impose its own punishment on McCaffery, including permanent removal from the bench.

Monday's order was supported by Chief Justice Ronald Castille and Justices Max Baer, Thomas Saylor and Correale Stevens.

As a group, they wrote McCaffery's the immediate suspension was necessary "to protect and preserve the integrity... and the administration of justice for the citizens of this Commonwealth."

The majority noted that while the porn scandal - with its demeaning depictions of women ranging from seniors to uniformed school girls - may be the most public indignity, McCaffery also faces allegations over:

[redacted]

Exhibit C

STATE EMAIL INVESTIGATION

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* His wife Lisa Rapaport's alleged acceptance of hundreds of thousands of dollars in referral fees from plaintiff's firms while employed as an administrative assistant in McCaffery's office.

* McCaffery's reported outreach to a Philadelphia traffic court official over a citation issued to Rapaport.

Justice Debra Todd filed a dissent, arguing the majority, including a "deeply-involved" Castille, was wrong to suspend McCaffery absent no "independent... findings regarding merits or credibility" of the charges against him.

Todd said the entire matter should be referred immediately to the Judicial Conduct Board for expedited treatment.

McCaffery and Justice J. Michael Eakin did not participate in Monday's ruling.

McCaffery, in a statement issued Monday night by his attorney, said he was being unfairly targeted by Chief Justice Ronald Castille - who wrote his own scathing opinion in support of the suspension.

To read more on Castille's opinion, **click here.**
[http://www.pennlive.com/midstate/index.ssf/2014/10/chief_justice_ronald_castille.html]

McCaffery also predicted he will be returned to his seat on the seven-person bench soon.

The suspension order follows a highly-unusual Oct. 10 personal review by Castille of the email files uncovered in the OAG's computer archives earlier this year, to check whether any judges were involved.

McCaffery, Castille reported last week, **turned up 234 times in threads involving sexually- or otherwise offensive posts. [http://www.pennlive.com/midstate/index.ssf/2014/10/court_review_of_oag_sex-mail_f.html]** In most of those cases, the chief justice alleged, McCaffery was the source point for the offending emails.

"The large majority," Castille wrote then, "were sent by Justice McCaffery to an agent of the Office of Attorney General who has since retired. The agent then forwarded the materials to numerous individuals."

The court's suspension order did not touch a second justice implicated in the pornography scandal, Mechanicsburg native and former Cumberland County District Attorney Eakin.

Eakin became embroiled in the scandal Thursday, when a Philadelphia Daily News reporter confronted him with evidence that racy emails were allegedly sent to him through a Yahoo email account carrying a fictitious name.

Eakin, who has been on the court since 2001, didn't comment at the time.

But **he unloaded accusations Friday that that disclosure was the end result of threats made the day before by McCaffery to him [http://www.pennlive.com/midstate/index.ssf/2014/10/blackmail_second_pa_supreme_co.html]** if Eakin didn't intervene on McCaffery's behalf with Castille.

Eakin also self-reported the emails that allegedly were received by him - there has been no indication to this point that Eakin forwarded any images to others - to the Judicial Conduct Board for review.

Castille said Monday that that was an important distinction.

"Justice Eakin has stepped forward and has voluntarily asked for a review of the materials released through Justice McCaffery who clearly had knowledge of the content and provenance of the emails," Castille wrote.

"This is in contrast to the conduct of Justice McCaffery, who continues to blame others for the ethical lapses arising from his own volition and deliberate conduct."

McCaffery has denied making any threats to Eakin.
[http://www.pennlive.com/midstate/index.ssf/2014/10/pa_supreme_court_justice_mccaf.html] On Friday, he said he was only trying to give his colleague a heads-up about reports that he had heard about the emails in Eakin's account.

The internal suspension is believed to be only the third in the court's long history, and the first time it happened where the justice in question was not facing criminal charges.

That was shocking to longtime court observers, both because of the bold assertion of the court's power to remove a popularly elected justice outside the methods set out in the state Constitution, and the fact that three other justices would have followed Castille's lead when the chief's personal relationship with McCaffery is so bad.

"This is an assertion of power that leave me speechless," said Bruce Ledewitz, a Duquesne University law professor.

In the interim, it means the state's high court will operate with six justices.

Ledewitz said that should not be a problem in the short term, in part because the docket before the court is not loaded with as many politically sensitive cases as it was 2012, when former Justice Joan Orie Melvin was relieved of her duties after being charged with using state staffers for campaign work.

The other suspension occurred in 1993, when Rolf Larsen was relieved of his duties after being charged with using court employees to obtain drugs for him through fraudulent prescriptions.

The move on McCaffery was par for the course in the pornography scandal.

It has already felled three high-ranking Corbett Administration staffers - including former Environmental Protection Secretary Christopher Abruzzo and Board of Probation and Parole member Randy Feathers - and led two other former OAG staffers to resign their current jobs.

The smutty emails pointing to McCaffery exist within a larger cache of sexually-explicit emails that were circulated among at least 40 current and former OAG employees between late 2008 and May 2012.

The emails - all in apparent violation of office computer use policies - came to light earlier this year during Kane's internal review of her predecessors' handling of **the Jerry Sandusky child sexual abuse case. [http://www.pennlive.com/jerry-sandusky/]**

Castille asked Kane's office for the opportunity to review the files out of concern over published reports suggesting that members of the judiciary were implicated in the email distribution rings.

Kane's office, meanwhile, has only released names and email files of only eight former OAG staffers involved in the pornographic dialogues, all of whom worked for Gov. Tom Corbett when he was Attorney General.

Corbett was not personally involved in the email rings, and has denied having any personal knowledge of it.

Kane has been criticized for what some have called a selective release of information to date. She has countered that workplace rules governing ongoing disciplinary actions against employees who still work for the office and other undisclosed legal restrictions have required that others' files remain off-limits.

Report Clears Remaining Pa. Justices In Porn Email Scandal

By **Dan Packel**

Law360, Philadelphia (December 19, 2014, 2:57 PM ET) -- A report commissioned by the Pennsylvania Supreme Court in the wake of a pornographic email scandal involving now-retired Justice Seamus McCaffery on Friday revealed that no additional inappropriate emails traveled between the court and the state Attorney General's Office.
Duane Morris LLP partner Rob Byer, who was appointed special counsel to the court in the matter, said in the report that he had reviewed nearly 6,000 emails provided by the OAG and that McCaffery — who **stepped down in October** — was the only member of the court to send or receive improper material in communications with the OAG.

He added that none of the emails contained any discussion of cases in the state's judicial system, except for proper messages relating to a statewide grand jury investigation and to authorizations to intercept wire, electronic or oral communications.

"My review of the email messages identified by the Office of Attorney General for the period January 1, 2008, through December 31, 2012, in which at least one Supreme Court justice and one member of OAG appear in the address fields demonstrates no improprieties with respect to any Justice or Judge, other than the previously reported email messages from Seamus P. McCaffery transmitting pornographic materials," Byer summarized in his conclusion.

Byer noted that he was initially entrusted to review roughly 4,000 emails that were exchanged between members of the court and members of the OAG, a total that grew to over 4,800 when the date range for the inquiry was extended. He also examined more than 1,000 additional emails that were sent from a private email account of Justice Michael Eakin under the name "John Smith."

But he said that the actual number of emails was substantially lower because of duplications.

Byer's investigation revealed that McCaffery, by far, exchanged more emails with figures in the OAG than anyone else on the court, nearly 3,000. The report noted McCaffery and his wife, Lise Rapaport, who served on his judicial staff were "prolific senders of email 'blasts' to various groups of recipients, including members of OAG and others within the judicial system."

Exhibit D

He said that beyond the pornography, there were no other improper emails, and in particular, no emails discussing cases or displaying personal relationships that would merit recusal.

Byer also initially found a substantial number of emails between Justice Correale Stevens and the OAG. Accounting for duplicates, the initial figure of nearly 1,000 dropped to little over 500. Of these, 220 messages were sent when the justice served as a judge on the Superior Court and involved necessary communications over wiretaps. Others included listserv emails, "blasts" originated by McCaffery and Rapaport, and a small number of direct email exchanges deemed appropriate.

The third largest set of emails in the collection involved Justice Michael Eakin. But Byer said that the emails tied to both Justice Eakin's work account and personal account were similarly unremarkable. He did note one pornographic email sent to the latter account — which Justice Eakin publicly acknowledged in November in response to a **blackmail threat from McCaffery** — but emphasized that individuals cannot control what they receive, adding that the justice had not forwarded or responded to that email.

Byer additionally took the time to calculate the actual number of emails shared by current members of the court and the OAG — discounting duplicates — McCaffery's emails, and those involving Justice Stevens when he was on the Superior Court. He found only 196, noting that of these, only four were originated by a member of the court and six were originated by a staffer at the OAG directly to a justice, all relating to an informal dinner involving Justice Eakin.

In the wake of McCaffery's retirement, judicial watchdog group Pennsylvanians For Modern Courts had **asked for a public review of the emails.**

"It's been a rough few months for the court system, and we are pleased that the emails (with the exception of those from Justice McCaffery) were not improper," Executive Director Lynn Marks said in an email. "The Supreme Court and Rob Byer should be commended for their serious attention to this issue. Moving forward, we hope that the Court maintains its commitment to transparency and fully understands the need to avoid even the appearance of impropriety."

An attorney for McCaffery did not immediately respond to a request for comment.

--Editing by Patricia K. Cole.

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Pa. board found Eakin's emails 'mildly pornographic'

By Craig R. McCoy, Inquirer Staff Writer
POSTED: October 21, 2015

"Mildly pornographic." No worse than what "appears commonly in Playboy."

That was what a Pennsylvania board determined late last year when it cleared state Supreme Court Justice J. Michael Eakin of misconduct even though he had received about 50 pornographic emails on state computers.

The Judicial Conduct Board, under fire for its role in the so-called Porngate scandal, has offered a rare glimpse into its normally secret workings by publicly explaining its reasons for clearing Eakin.

In a step court officials announced Monday, the board that polices Pennsylvania judges released the five-page letter it sent Eakin in late 2014 dismissing a complaint against him.

The letter said 50 images emailed to the Republican justice between 2009 and 2012 could "best be described as mildly pornographic or sexually suggestive in the vein of material that appears commonly in Playboy magazine."

And because Eakin had only received the adult-oriented emails, but had not sent any, the board concluded he was blameless.

The 12-member board praised Eakin's participation in the inquiry, calling him "cooperative and helpful" - though the board said he told it he could not recall receiving the emails in question.

The board also wrote that "judges do not forfeit all the privacy that they had enjoyed as private citizens" and that it was clear Eakin's emails were meant to be "privately shared among friends."

Eakin's only possible transgression, the panel said, was failing to tell his friends to knock off sending him offensive emails. But that omission "does not rise to the level of sanctionable misconduct," the board said.

The judicial board has been under pressure to explain how it handled the Eakin case since state Attorney General Kathleen G. Kane declared on Oct. 1 that she had email evidence tying the justice to "racial, misogynistic pornography." The justice violated ethics rules, Kane said.

Neither Kane nor the judicial board has made any of Eakin's emails public. But the Philadelphia Daily News has reported that, along with sexually explicit messages, Eakin received emails that mocked African Americans as lazy, gay people as promiscuous, Muslim children as suicide bombers, and Mexicans as "beaners."

The newspaper also cited three emails Eakin sent - two containing bawdy jokes; one was a supposed gag in which a victim of domestic abuse is advised she will not get hit if she keeps her "mouth shut."

In contrast, the board letter clearing Eakin last year said the judicial panel had had found no emails with racial connotations.

If it finds misconduct, the board can bring charges to a Court of Judicial Discipline. Supreme Court justices found guilty of misconduct can appeal to a special tribunal made up of state Commonwealth and Superior Court judges.

After Kane leveled her charge, the conduct board and state Supreme Court reacted - the high court, too, had cleared Eakin after an investigation - by reopening inquiries into his emails.

The previous investigations took place late last year when the scandal over pornographic messages sent on state computers first shook the high court. Kane lit that fuse, too, disclosing that her office's email

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Exhibit E

servers had served as a hub for the exchange of porn among state and federal prosecutors, jurists, detectives, and others.

The scandal has already cost the high court one justice. Seamus McCaffery's colleagues suspended him after an inquiry found he had sent or received 234 emails with porn between 2008 and 2012. McCaffery retired from the court amid allegations that he had threatened to expose Eakin as a porn recipient.

Before he retired, McCaffery said, "I sincerely apologize for my lapse in judgment." Similarly, Eakin said last week: "I sincerely apologize."

In a continuing dispute about whether Kane provided every damaging Eakin email to investigators, Kane, a Democrat, issued an official statement last week saying that the investigations had indeed had access to the key emails. She stressed that her office had given a computer disk containing damaging material to the conduct board.

Within hours, though, her spokesman added an important caveat: The disk was incomplete, the office acknowledged.

Spokesman Chuck Ardo said the office later found more damaging emails only after the disk had been made. But it said it did not make them available until Dec. 10 - two days after a majority of the dozen members of the Judicial Conduct Board had voted to clear Eakin.

Ardo said the Attorney General's Office had informed the board of the new discovery. Robert Graci, the board's chief counsel, declined Monday to confirm or deny that.

Ardo has also said the disk did not contain emails from 2013 and 2014 that also are reported to contain troubling messages. The newest material on the disk was from 2012.

As for the Supreme Court review, Kane has insisted her office made every Eakin email available to it. The court has been just as emphatic in saying this was not so.

The court's expert, Pittsburgh lawyer Robert Byer, said in his report that Eakin had received just one email with "offensive sexual conduct."

In an interview with The Inquirer on Monday, former Supreme Court Chief Justice Ronald D. Castille called for an independent fact-finder, one not beholden to the Supreme Court, the attorney general, or the judicial panel, to examine last year's investigations of Eakin and how Kane had handled the email evidence.

"Someone," he said, "ought to go into this to determine who sent what to who."

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Kane fights back and ignites wider debate on Pa. politics

Pennsylvania Attorney General Kathleen Kane looks on while arriving ahead of the papal Mass on Sept. 27, 2015, on the Benjamin Franklin Parkway in Philadelphia. AP Photo/Matt Slocum

GALLERY: Kane fights back and ignites wider debate on Pa. politics

Craig R. McCoy and Angela Couloumbis, *Inquirer Staff Writers*
LAST UPDATED: Sunday, October 25, 2015, 1:08 AM

The Inquirer

After months of punishing headlines, Pennsylvania Attorney General Kathleen G. Kane has struck back hard.

She took another swipe at a familiar target: the so-called old boys' network. In doing so, she proved the merit of a well-worn political adage: when in trouble, change the subject.

On Oct. 1, the day she was charged with a fresh count of perjury, Kane accused a Supreme Court justice of exchanging emails that included "racial, misogynistic pornography."

On Thursday, the day the suspension of her law license took effect, she made public 48 crude emails of Justice J. Michael Eakin's. They were full of juvenile jokes and pictures of naked women.

MORE COVERAGE
Pa. Senate taking steps to remove Kane

Kane publicly and sharply questioned whether Eakin was given a pass by the high court, the Judicial Conduct Board, and even her own chief deputy when all three reviewed the justice's emails last year.

Exhibit F

It's not clear whether any of it will help Kane. Her critics say the porn furor is irrelevant to her pending criminal trial on charges she illegally leaked confidential information and later lied about it to a grand jury.

And on Friday, the state Senate took the first steps to possibly force her from office.

Still, there is no doubt that Kane has ignited a roiling debate rooted in one of her core contentions: that Pennsylvania politics is dominated by an old male guard that protects its own.

Christopher Borick, a political analyst at Muhlenberg College, said Kane had cast a harsh light on a cozy and sophomoric judicial culture and tapped into public anger at the powerful.

"I don't think her getting leverage on these things necessarily helps her. But it certainly hurts others," he said.

"What she's done is point out that this whole judicial disciplinary system does not work," said Bryn Mawr lawyer Mark Schwartz, normally a sharp critic of Kane.

By making public the offensive emails, Kane marshaled evidence to suggest that both the Supreme Court and the state's Judicial Conduct Board whitewashed misconduct by Eakin.

Last year, the judicial panel called his troubling emails only "mildly pornographic." The court's expert called his messages "unremarkable."

Kane called these judgments into question Thursday when she gave reporters copies of Eakin emails that included an image of an obese couple having sex and of an overweight naked women on all fours made up to resemble a pig.

Moreover, other Eakin emails - either made public by Kane or leaked to the media - included jokes mocking gays, lesbians, African Americans, Latinos, battered women, Muslims, drunken coeds, and nuns.

In all but a handful of cases, Eakin was the recipient of the emails, not the sender. Among 48 emails that Kane made public last week, he was the sender of only three, none of which contained nudity.

Eakin, 66, has been an appeals judge for 20 years and is among the Republican majority on the Supreme Court. He has apologized and said the messages "do not reflect my character or beliefs."

To critics, Kane is the epitome of the imperfect messenger in raising an alarm about the disturbing emails.

Why, detractors ask, was she silent until this month about Eakin's messages, even though her office turned up his troubling emails year ago?

Why did she target Eakin only after he joined his colleagues on the court in voting to suspend her law license?

Why has there been so much confusion - requiring clarifying statements from Kane's office - about whether or when she made every email available to those who reviewed them?

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In an interview Friday, former Supreme Court Chief Justice Ronald Castille said Kane, the Judicial Conduct Board, and the Supreme Court all had mishandled the email controversy.

He said the high court should have one of the statewide grand jury judges appoint a special prosecutor to critically examine the exchanges of porn among judges and other officials - and to examine how Kane, the court, and judicial board had dealt with the issue.

"These are serious charges being leveled back and forth. And it has devolved to who did what to whom and when," he said. "Somebody's got to get to the bottom of it."

Scandal over the exchange of porn on state time and on state computers first erupted last fall after Kane announced that her office, before her election, had for years been a hub for the exchange of X-rated material.

At the time, Kane named just eight men - all former top staffers in her office - as having participated in the exchange. She did not name any of the dozens of prosectors, detectives, criminal defense lawyers, and others who were in on the email chains.

The furor peaked last fall when Justice Seamus McCaffery, a Democrat from Philadelphia, retired after apologizing for his involvement in exchanges of pornography.

At that time, the Supreme Court hired a former Commonwealth Court judge to serve as its special counsel to see whether other justices had been involved in improper exchanges.

Kane insists that the counsel, Robert L. Byer, and the Judicial Conduct Board examined the same set of emails. Yet, confusingly, Byer reported only one with "offensive sexual content," while the judicial panel found 50 that were "mildly pornographic."

After a two-month inquiry, the Judicial Conduct Board voted to clear Eakin.

Under the state constitution, the panel is made up of 12 appointees of the governor and the Supreme Court - a mix of judges, lawyers, and laypeople - and is equally split between Republicans and Democrats.

Its members have been mostly men. The panel that cleared Eakin was made up of nine men and three women.

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The Legal Intelligencer

Eakin Suspended With Pay by CJD

Ben Seal, The Legal Intelligencer

December 22, 2015

The Court of Judicial Discipline has suspended Justice J. Michael Eakin on an interim basis with pay pending his trial on the merits over his involvement in the exchange of offensive emails. The suspension, the third of a sitting state Supreme Court justice since 2012, comes following a hearing Monday in which Eakin tearfully apologized and claimed that his lesson had been learned.

Eakin has been charged by the Judicial Conduct Board with four ethics violations over sending and receiving emails with sexist, racist and otherwise offensive content. The CJD's six-page per curiam order requests pretrial memoranda from both Eakin and the JCB by Jan. 11 and sets a pretrial conference for Jan. 21 in Harrisburg.

"The emails demonstrate that Justice Eakin participated in a pattern of not only receiving emails which were insensitive and inappropriate toward matters involving gender, race, sexual orientation and ethnicity, but also sending and forwarding a number of such emails," the order said.

At Monday's hearing, Eakin's defense before a three-judge panel of the court centered on the argument that his 20 years of opinion writing have been free of bias, but the court noted its concern at even the suggestion of such bias.

"There should be no doubt that this court is deeply and profoundly troubled by even a remote possibility that the patently discriminatory and offensive views and attitudes expressed in the emails underlying this case may have impacted Justice Eakin's judicial work," the order said.

The court was clear that the suspension is not a determination of guilt but, rather, an attempt to safeguard the integrity of the judicial system and the public's confidence.

Even though Eakin did not intend to publish his emails to the general public, the court said, they were published nonetheless, and have become "infamous." Because the emails were exchanged on a government-issued computer and included other government employees and their government email addresses, "he should have had a lower expectation of privacy," the court said.

Exhibit G

Francis J. Puskas II, deputy chief counsel for the JCB, argued Monday that whether or not Eakin intended for the emails to be made public, "that bell can't be unrung."

Until his actions can be reviewed more closely at a trial on the merits, "the integrity of the Pennsylvania judiciary has been and continues to be subject to disrespect," the court said.

The order pointed specifically to two email exchanges between Eakin and deputy attorney general Jeffrey Baxter in which they commented on the physical attributes of female employees in Eakin's office. The court called the emails "extremely inappropriate and offensive."

Both of the women mentioned in the emails testified Monday on Eakin's behalf, saying they were not upset by their involvement in his emails.

Lynn Zembower, Eakin's office manager, said Eakin has "always been respectful and professional" and that the emails in which Eakin discussed her with Baxter did not bother her.

Janey Thrush, Eakin's secretary, said she was not offended by an email Baxter sent to Eakin in which he asked Eakin to slap the ass of multiple people at a party Baxter couldn't attend, and "Janey's too and let me know how it was." Eakin responded, in part, "Will do."

The JCB charged Eakin on Dec. 8 with violations of Canon 2A of the old Code of Judicial Conduct, on promoting public confidence in the integrity and impartiality of the judiciary; Canon 5, on regulating extrajudicial activities to minimize the risk of conflict with judicial duties; Article V, Section 17(b) of the Pennsylvania Constitution, on violating canons of legal ethics; and Article V, Section 18(d)(1), on bringing the judicial office into disrepute.

Puskas did not immediately return a call for comment Tuesday evening.

Jim Koval, spokesman for the Administrative Office of Pennsylvania Courts, declined to comment.

Eakin's attorney said he seeks a speedy resolution to the trial.

"We are disappointed in the order, but we respect the process and we will prepare for trial," said William C. Costopoulos of Costopoulos, Foster & Fields, one of Eakin's attorneys. "Our hope is the trial will be scheduled sooner rather than later to bring closure to this matter."

Eakin's wife, Heidi Eakin, also of Costopoulos Foster, is also representing the justice.

Justice Eakin's suspension follows the 2012 suspension with pay of former Justice Joan Orie Melvin and the 2014 suspension with pay of former Justice Seamus P. McCaffery, both of whom were suspended by the Supreme Court.

Ben Seal can be contacted at 215-557-2368 or bseal@alm.com. Follow him on Twitter @BSealTLI. •

In 11th hour bid, Kane seeks reinstatement of her law license

On the eve of a critical Senate hearing on her political future, Pennsylvania Attorney General Kathleen Kane has asked the state Supreme Court on an emergency basis to reinstate her law license. STEVEN M. FALK / Staff Photographer

Angela Couloumbis And Craig R. McCoy, ***STAFF WRITERS***

LAST UPDATED: Tuesday, January 12, 2016, 1:08 AM

POSTED: Monday, January 11, 2016, 4:37 PM

The Inquirer

On the eve of a critical Senate hearing on her political future, Pennsylvania Attorney General Kathleen G. Kane on Monday asked the state Supreme Court to reinstate her law license.

Kane contended that when the high court voted unanimously to temporarily suspend her law license last fall, its opinion was "incurably tainted" by Justice J. Michael Eakin's involvement in the Porngate scandal.

Exhibit H

Kane said Eakin was aware that she had access to several dozen emails with pornographic and other offensive content that he sent or received on a personal email account. The emails were captured on state computer servers because a deputy attorney general, using his government email account, took part in the exchanges.

"Justice Eakin's participation was not just a lapse in judgment, but rather was a knowing and deliberate attempt to remove his accuser," Kane contended in court papers filed Monday afternoon.

MORE COVERAGE
Kane faces key Senate hearing Tuesday in bid to oust her

Kane's lawyer, James F. Mundy, said he hoped to receive a decision in the matter before 1 p.m. Tuesday, when a state Senate committee is to hold its final hearing on whether Kane should be removed from office. However, it is unlikely the high court will move that swiftly.

For several months, the committee has been exploring whether Kane, a Democrat, can continue to function as the state's top law enforcement officer without an active law license. The state constitution requires the attorney general to be a lawyer, and the committee has heard testimony from constitutional experts that most of her duties require her to act as a lawyer.

The high court suspended Kane's law license after she was charged with perjury and other offenses for allegedly leaking confidential grand jury material in a big to embarrass a critic. She has pleaded not guilty.

After its hearing Tuesday, the Senate committee is expected to produce a report to recommend whether the full Senate should vote to remove her. The constitution provides that she and other elected officials may be removed by the governor for "reasonable cause," after a two-thirds vote in the Senate.

"If the Senate were to give the governor power to remove her, the constitution provides no remedy to put her back in there - you can't take it back," Mundy said. "It's called irreparable harm."

Eakin, a Republican from Cumberland County, was temporarily suspended last month by the Court of Judicial Discipline. The three-judge panel found that Eakin's participation in the email scandal had jeopardized the public's trust in the judiciary. A formal trial to determine further discipline, if any, for Eakin is expected early this year.

Last week, three new justices - all Democrats - were sworn in on the state Supreme Court. With Eakin's suspension, Chief Justice Thomas Saylor is only Republican on the Supreme Court.

The porn email scandal first roiled the Supreme Court in late 2014, when Justice Seamus McCaffery suddenly retired after he was linked to hundreds of offensive emails.

Afterward, the court hired an outside lawyer to review all emails sent or received by all justices. The lawyer found Eakin's "unremarkable."

Kane raised the issue of Eakin's emails anew in the fall. She did so after he joined his colleagues on the Supreme Court in unanimously voting to suspend her law license.

Kane made public several dozen Eakin emails, including ones that contained pictures and videos of topless women, and supposed jokes at the expense of gays, lesbians, feminists, and others.

Eakin has apologized for the messages, saying they do not reflect his character.

Kane argued in her emergency petition that Eakin should have recused himself from the vote to suspend her license, and that judicial impartiality is critical to her right to due process.

While Eakin was only one of five justices to vote to suspend Kane's license in September, her lawyers argued that he might have influenced the entire court through his powers of persuasion. "Appellate judges do not operate in silos," they wrote.

Despite Kane's emergency petition, Senate lawyers said Monday that Tuesday's committee hearing would proceed as scheduled.

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Angela Couloumbis and Craig R. McCoy
STAFF WRITERS

IN THE SUPREME COURT OF PENNSYLVANIA

In re KATHLEEN GRANAHAN KANE, : INTERMEDIATE COURT DOCKET
Petitioner :
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CERTIFICATE OF SERVICE

I hereby certify that this day I have served a copy of Office of Disciplinary Counsel's Answer to Petitioner's Application for Extraordinary Relief and all accompanying documents upon James F. Mundy, III, Esquire, counsel for Petitioner, 527 Linden Street, Scranton, PA 18503-1605, by electronic transmission in the form of email, as requested by Mr. Mundy, addressed to:

JFMUNDY52@gmail.com

(Counsel for Petitioner)

Date: 1/20/2016

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