

For the most part, Plaintiff limited his opposition to arguing that Judge Grine need not recuse himself from this matter. Specifically, Plaintiff argued that there is no need for an out-of-county judge “where Judge Grine has presided over this action with knowledge of the subject matter and without any objection of any party since July 2013, where Judge Grine is not disqualified, and where Defendants have made no showing that Judge Grine must or should recuse himself.” (Opp. Mem., p 3).¹

But Judge Grine has already decided to the contrary. On April 29, 2015, Judge Grine entered an Order providing that “the Court recuses from this matter.” Judge Grine also ruled that “Another judge will be assigned to preside over this matter.” (Order, April 29, 2015). Notably, Judge Grine’s recusal obviates Plaintiff’s primary arguments – that Defendants have shown no basis for recusal and that Judge Grine is best suited to hear this case because of his familiarity with the issues. Given that a new judge will be assigned to hear this case in any event, Plaintiff cannot contend that another judge of the Centre County Court of Common Pleas is any better suited to hear this case than an out-of-county judge. However, because Judge Grine’s Order is limited to his own recusal, it does not moot the

¹ Actually, there was very little activity in this case. Judge Grine had stayed the case early on at the request of Plaintiff.

Defendants' request that an out-of-county judge, rather than another judge of the Centre County Court of Common Pleas, be assigned to hear the case.

It is undisputed that with the filing of the very first case arising out of the Sandusky matter – i.e., the Sandusky criminal case – the entire Centre County bench established a practice of recusal in all Sandusky/PSU cases. Not surprisingly, the entire bench proceeded to recuse in all subsequent Sandusky/PSU-related cases, including *In re The Second Mile* (Case No. 14-12-0255), *McQueary v. The Pennsylvania State University* (Case No. 12-1804), and *Paterno et. al. v. National Collegiate Athletic Association* (Case No. 13-2082).

The general reason for full-bench recusal was first articulated in the press release that was issued by the Administrative Office of Pennsylvania Courts in connection with the appointment of an out-of-county judge to preside over the Sandusky criminal case:

The judges' recusals are intended to avoid **any appearance** of conflict of interest due to **real or perceived** connections to [Sandusky], the Second Mile charity, or the Pennsylvania State University.

(AOPC Press Release, dated November 22, 2011, attached as Exhibit 1, emphasis added). The reasons that compelled the appointment of an out-of-county judge in the four prior Sandusky/PSU cases compel the appointment of an out-of-county judge to preside over this case between the former President of Penn State and the Freeh entities and proposed defendant Penn State.

Plaintiff does not dispute that his proposed Complaint is an amalgam of every case in which every member of the Centre County bench has decided to recuse. The proposed 139-page, 432-paragraph Complaint asserts purported claims that arise out of and touch upon virtually every aspect of the Sandusky/PSU matter. The proposed Complaint details: Sandusky's criminal activities; the role and involvement of Spanier, former Penn State Senior Vice President Gary Schultz and former Penn State Athletic Director Timothy Curley; the commissioning and preparation of the Freeh Report; the termination of Coach Joseph Paterno; the role of the NCAA; the role and conduct of the Board of Trustees of Penn State; the role and activities of The Second Mile; and the conduct of the Pennsylvania Attorney General in prosecuting Spanier. Indeed, the "Parties and Relevant Third Parties" identified in the Proposed Complaint include Spanier, Freeh and the Freeh entities FSS and FGIS, Penn State, Jerry Sandusky, The Second Mile, various members of the Board of Trustees, Michael J. McQueary, "prominent" local physician Jonathan Dranov and the NCAA.

Plaintiff's suggestion that the request for an out-of-county judge should be rejected for failure to allege a specific basis for recusal (i.e, conflict or bias) for each individual member of the Court is meritless. The undisputed fact is that every member of the Court has already made the determination that he/she should not preside in Sandusky/PSU matters. Former President Judge David E. Grine

certified to the AOPC that an out-of-county judge was needed in the Sandusky criminal case “due to the recusal of the Judges of the Centre County Court of Common Pleas.” The AOPC reported that recusal was necessary to avoid any appearance of conflict to due to actual or perceived connections to Sandusky, Second Mile or PSU. And, finally, Chief Justice Castille accepted the determination of recusal in ordering the appointment of an out-of-county judge pursuant to Pennsylvania Rule of Judicial Administration 701(C)(1). (*See* Supreme Court Order, dated December 6, 2011).

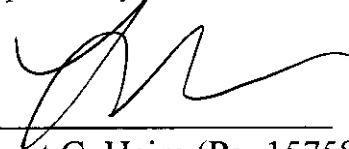
Moreover, Defendants are not in a position to know the specific reasons that compelled each and every individual judge to conclude that he/she should recuse in the prior Sandusky/PSU-related cases. While the general reason – avoidance of “any appearance” of impropriety “due to real or perceived connections” – has been disclosed, the specific reasons have never been publicly disclosed on the record. Thus, Plaintiff would appear to suggest that the prior determinations of recusal should not be accepted in connection with the pending motion and that an individual inquiry of each and every member of the Court should be conducted. That is simply not necessary given the history and established practice of full bench recusal in all Sandusky/PSU-related cases.

Finally, failing to appoint an out-of-county judge in this case – which is indisputably an amalgam of the prior cases – would be difficult to fathom. The

litigants and the public at large would be left to question the obvious inconsistency between full bench recusal and appointment of out-of-county judges in the four prior Sandusky/PSU cases and no recusal or appointment of an out-of-county judge in a case which contains all of the elements of the other four cases by the former President of Penn State against the Freeh parties and proposed defendant Penn State.

The law, logic, fairness and common sense all dictate that an out-of-county judge should be appointed to preside over all further proceedings in this case.

Respectfully submitted,



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Dated: May 5, 2015

*Attorneys for Defendants Louis J.
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LLP*

EXHIBIT 1



ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

News for Immediate Release

Nov. 22, 2011

Commonwealth v. Gerald Sandusky
Centre County Trial Judges Recuse;
Out-of-County Judges Assigned

HARRISBURG, PA — The Administrative Office of Pennsylvania Courts (AOPC) said today that all Centre County Common Pleas Court judges have recused themselves from hearing matters related to the case of Commonwealth v. Gerald Sandusky.

The judges' recusals are intended to avoid any appearance of conflict of interest due to real or perceived connections to the defendant, the Second Mile charity, or the Pennsylvania State University.

Because of the recusals, the Centre County president judge has requested AOPC to assign an out-of-county Common Pleas judge to handle forthcoming matters related to the case. McKean County Senior Judge John M. Cleland has been appointed.

Until Judge Cleland is able to assume jurisdiction, miscellaneous petitions filed by counsel with respect to the Sandusky case will be heard by President Judge Kathy A. Morrow of Judicial District 41 -- comprised of Perry and Juniata counties -- who has been designated for that purpose.

Neither judge has any known connections with the defendant, the Pennsylvania State University or the Second Mile charity, nor any officers or representatives of those entities.

Judge Cleland has been a jurist since 1984. He has served as president judge of McKean County, and as both an active and senior judge of the Superior Court of Pennsylvania. Judge Cleland also served as chairman of the Interbranch Commission on Juvenile Justice.

Judge Morrow has been a jurist since 2004, and had engaged in the private practice of law since 1982.

A senior judge is one who has retired from active service but remains available by appointment to hear cases.

REMINDER TO MEDIA: www.co.centre.pa.us/media is the single source, Web link for updates, scheduling, and other court information regarding the Sandusky case.

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Media contact: Jim Koval, 717-231-3324

www.pacourts.us



Order of Judicial Assignment

Logout

**SUPREME COURT OF PENNSYLVANIA
ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
REQUEST FOR ASSIGNMENT OF JUDGE**

To the Court Administrator of Pennsylvania: Date: Tuesday, December 06, 2011

I, David E. Grine , President Judge of Judicial District No. 49 request that the Supreme Court of Pennsylvania temporarily assign a judge to sit at Centre County Court of Common Pleas.
To try all proceedings in Commonwealth vs. Gerald Sandusky Common Pleas docket number:

Commencing 11/28/2011
With days of compensation.

For the following reason:

Due to the recusal of the Judges of the Centre County Court of Common Pleas.

Signed: David E. Grine on 11/21/2011 3:31:42 PM

To the Supreme Court of Pennsylvania:

I hereby certify the availability of and recommend Senior Judge John M. Cleland whose assignment will not hinder the disposition of business in his/her home district. No other judge of the requesting district will be assigned during the period above.

Signed: Zygmunt A. Pines on 11/28/2011

AOPC case number: 11 1199

ORDER

By virtue of PA RJA 701(C)(2), the foregoing recommendation is approved and the judge assigned is vested with the same power and authority as the judges of the requesting district for the purposes and period set forth.

Signed: Ronald D. Castille Chief Justice of Pennsylvania

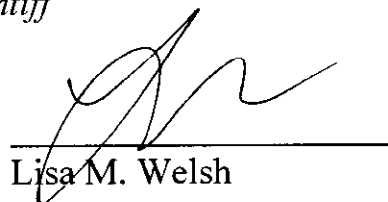
CERTIFICATE OF SERVICE

I, Lisa M. Welsh, hereby certify that I caused to be served on May 5, 2015, a true and correct copy of the foregoing Reply in Support of Motion for Assignment of an Out-of-County Judge by first-class mail upon the following:

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