

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2017 MAR 21 PM 2:56

SUPERIOR COURT DIVISION

WAKE CO., C.S.C.

WAKE COUNTY

16-M-3240

IN RE: ATTORNEY COLLEEN JANSSEN, FORMER
ASSISTANT DISTRICT ATTORNEY FOR THE
10TH JUDICIAL DISTRICT

This matter is before the court for hearing commencing March 8, 2017, upon an Amended Show Cause Order issued by the undersigned judge on January 4, 2017 alleging conduct by Colleen Janssen (JANSSEN) in her capacity as an Assistant District Attorney for the 10th Judicial District which, if proven, would constitute violations of North Carolina State Bar Rules of Professional Conduct. By response dated February 3, 2017 JANSSEN admitted -- in part -- and denied --in part -- the facts and violations alleged.

The Superior Court of Wake County has exercised the inherent authority of the court to take disciplinary action against attorneys practicing in this court to initiate these proceedings. The North Carolina State Bar, through the Office of Counsel, has been appointed to prosecute this matter.

JANSSEN has consented to the jurisdiction of the court. She is represented by Attorneys Richard T. Gammon and Joseph E. Zeszotarski, Jr.

The prosecutors are State Bar Counsel Katherine Jean, assisted by Deputy Counsel G. Patrick Murphy and Deputy Counsel Maria Brown.

JANSEEN and all Counsel have agreed to certain stipulated facts which appear of record.

The State Bar presented evidence through documents and the testimony of various witnesses and JANSSEN testified and presented additional evidence through the testimony of various witnesses, all of which appears of record.

All parties consented in open court to entry of this Order out of session.

BASED UPON ALL THE EVIDENCE BEFORE THIS COURT, BY CLEAR, COGENT AND CONVINCING EVIDENCE THE COURT MAKES THE FOLLOWING:

FINDINGS OF FACT

1. Shortly after being licensed to practice law in North Carolina in 2005, Colleen JANSSEN accepted employment as an Assistant District Attorney for the 10th Judicial District. From her initial employment until the series of events now in question JANSSEN was a highly regarded career prosecutor assigned primarily to prosecute a multitude of serious violent felony cases pending in the district. She was dedicated to her job, demonstrating a strong work ethic and a commitment to “doing the right thing.” She was liked and respected by her peers and by the law enforcement community. Prior to the events giving rise to this court’s show cause order, there is no evidence that JANSSEN had ever committed or been accused of committing any act of professional misconduct or of a violation of the Rules of Professional Conduct. The acts of professional misconduct hereinafter described constitute an isolated incident related solely to the SANDY and SURPRIS cases and were not a pattern of practice in which JANSSEN engaged in any other case that she prosecuted.
2. While serving as an Assistant District Attorney JANSSEN was assigned to the prosecution of the alleged April 17, 2013 robbery of Marcus Smith (SMITH) wherein Barshiri Sandy (SANDY) and Henry Surpris (SURPRIS) were charged with armed robbery and felony assault. (That case will be referred to hereinafter as the home invasion case.) Raleigh police Sgt. Nicholas Grimaldi (GRIMALDI) was the lead investigating officer assigned to investigate this alleged home invasion case.
3. At the time of his arrest SANDY told GRIMALDI that SMITH was a drug dealer and that SMITH had a stash house with several million dollars of product in it. SANDY indicated that he was hired by someone else who had

an issue with SMITH to go to SMITH's house on the date of the alleged crime. JANSSEN was aware of this information from GRIMALDI's police report. Neither SANDY nor SURPRIS made any further statements prior to their trial about SMITH. At trial their lawyers advised the court that the ir clients' purpose in going to SMITH's residence on the date of the alleged home invasion was not to commit a robbery but to recover money or drugs from SMITH which they believed he owed them as part of a drug debt. They contended SMITH was a drug dealer who, through a middle-man, had shorted them in a series of drug transactions.

4. During JANSSEN's interactions with SMITH, he consistently told her that he was not involved in the sale of drugs and that he was making his money in the music industry with his brother. Because SMITH expressed a reluctance to testify, JANSSEN constantly worked to gain and maintain SMITH'S trust in order to obtain his cooperation and testimony. JANSSEN had difficulty maintaining contact with SMITH. In an e-mail exchange between she and GRIMALDI in December of 2013 about her inability to locate SMITH, GRIMALDI stated that he thought SMITH was "back selling again."
5. During this time JANSSEN became aware of information through police intelligence that a Raleigh Police Officer was being followed and watched by SANDY, with a possible view to cause the officer or his family harm. This information regarding a potential threat to the safety of a law enforcement officer and to his family motivated JANSSEN to proceed with a heightened diligence in the prosecution of SANDY.
6. In July of 2014 JANSSEN became aware that Detective James Battle (BATTLE) of the Raleigh Police Department (RPD) was investigating SMITH for illegal drug activity. She sought out and met with BATTLE on one occasion and also communicated with him thereafter by e-mail regarding his investigation. At their meeting she asked BATTLE to delay charging SMITH until after her home invasion case was tried. He agreed. JANSSEN believed that if SMITH were facing felony drug charges, he would no longer cooperate and testify in the home invasion case.

7. On August 19, 2014 BATTLE e-mailed JANSSEN the following: "I have located a stash house for Smith and have obtained P.C. to apply for a search warrant for it. I would like to execute a search warrant on the home this week when Smith is not there. It is not Smith's house. He does not maintain utilities there. I would not be charging Smith with any crimes." In that e-mail BATTLE asked JANSSEN to "Please get back to me when you have time."
8. After the August 19th e-mail from BATTLE, JANSSEN never sought to obtain any information regarding the results of the execution of the search warrant on the stash house. Although she contacted BATTLE by e-mail on September 26, 2014 to advise him that the home invasion trial was delayed, telling him: "PLEASE DON'T HATE ME PLEASE DON'T HATE ME PLEASE DON'T HATE ME", she did not inquire about the status of the SMITH drug investigation or the results of the search of the stash house. JANSSEN was also aware that judges had found a sufficient factual basis of drug involvement by SMITH to authorize GPS tracking devices to be placed on vehicles associated with SMITH.
9. On August 22, 2014 after waiting for SMITH to leave the stash house, law enforcement officers executed the search warrant and seized approximately 150 pounds of marijuana and surveillance equipment which included a video showing SMITH at the stash house carrying the marijuana inside shortly before the warrant was executed.
10. Information regarding the stash house search and the video showing SMITH carrying the marijuana into the house prior to the search was not disclosed to SANDY or SURPRIS prior to or at their trial.
11. The home invasion case was called for a joint trial before Judge Paul Ridgeway at the October 27, 2014 criminal session of the Wake County Superior Court. SMITH testified that he was robbed at gun point by the

defendants and assaulted before he was able to flee. On direct examination JANSSEN elicited from SMITH the fact that he had previously been convicted of selling marijuana in 2005 and possession of drug paraphernalia in 2005 and 2012 and that he had a minor drug charge pending. He testified on cross examination that he was not in the business of selling drugs and that he had not sold drugs since 2005.

12. JANSSEN did not disclose anything about the SMITH drug investigation or her request to law enforcement that SMITH not be charged until after the home invasion trial. JANSSEN made no effort to correct SMITH's false testimony.
13. SANDY and SURPRIS testified in their own defense that their conduct was not a robbery. They testified that they went to SMITH's residence to collect on a drug debt and that SMITH assaulted them with a firearm. They testified that SMITH was the drug dealer who supplied the drugs which they had purchased through a middle-man. After the purchase they realized that SMITH had "shorted" them on the quantity and went to his house to confront him about the shortage.
14. During her closing statement to the jury JANSSEN argued that the defendants were unworthy of belief and that there was no evidence to support their claim that SMITH was a drug dealer.
15. Even after the testimony of SANDY and SURPRIS in their own defense, JANSSEN still did not provide any information regarding the SMITH drug investigation that could have been used by the defense to support the testimony of SANDY and SURPRIS regarding SMITH's drug activity.
16. This unfortunate course of events began when JANSSEN actively sought out and obtained the assistance of Sgt. BATTLE, who was conducting a major RPD drug investigation of Marcus SMITH, the alleged victim and material witness in JANSSEN's pending home invasion case. At JANSSEN's

request BATTLE agreed to delay charging SMITH with any criminal offense until after the home invasion trial ended.

17. That delay in charging SMITH allowed JANSSEN's material witness to testify without being impeached as a possible drug dealer because of pending serious drug charges, and permitted JANSSEN to argue to the court and jury that there was no evidence that SMITH was a drug dealer because --in part-- there were no serious pending drug charges. This tactic further precluded the home invasion defendants, SANDY and SURPRIS, access to that same information which would have supported their own testimony that they were not committing a robbery of SMITH, but were merely attempting to collect a drug debt.
18. This tactic by the prosecutor created a false impression that there was no evidence in existence in the possession of the police and the prosecutor that would support defendants' contentions and testimony that SMITH was a drug dealer. JANSSEN used this procedure to give the State an unfair advantage in the prosecution of the home invasion case. Had the prosecutor not made the request to delay charging her principal witness, it is unlikely that any evidentiary discovery violation would have occurred. When the home invasion case was called for trial and the prosecutor and trial judge became fully aware of the defendants' claimed defenses, JANSSEN should have realized and known that her tactic was unfair and improper, in the absence of a full disclosure of the SMITH drug investigation.
19. There is no direct evidence that JANSSEN actually knew that SMITH was a drug dealer. SMITH denied to her and to the jury that he was. In the absence of actual knowledge by JANSSEN, the court cannot find by clear, cogent and convincing evidence that JANSSEN intentionally and knowingly presented false evidence regarding SMITH's drug activity to the court and jury in the home invasion trial, such that she, with actual knowledge of the

falsity, knowingly and intentionally presented or failed to correct false testimony.

20. The court, however, does find that JANSSEN should have known that SMITH's testimony was probably false. Knowing that SMITH's testimony was probably false, JANSSEN engaged in a course of conduct demonstrating a negligent indifference to the rights of the home invasion defendants. It appears to the court that JANSSEN abandoned all reasoned and measured professional judgment in an effort to successfully prosecute two men she referred to as "bad guys", who she truly believed were a serious threat to the safety of the community. Although the credible evidence of record suggests that her belief may have been well founded, it did not justify her tactics and methods in the prosecution of the home invasion case.

21. Once JANSSEN had obtained the concurrence of investigating officers to delay charging SMITH, her course of conduct demonstrates an effort to refrain from receiving and to avoid exposure to specific information about the ongoing SMITH drug investigation. Her conduct in that regard, whether conscious or not, borders on willful blindness. She failed to follow up and obtain information from Sgt. BATTLE after the execution of the stash house search warrant to discover the nature of the evidence seized, although BATTLE had asked her to do so. She avoided any discussion of the facts of the SMITH drug investigation during her conversation with the Assistant United States Attorney who had assumed prosecution of SMITH, but at the same time emphasized to him that it was crucial that SMITH not be charged until after the home invasion case was concluded. She declined his offer to provide her with specific information about the status of the SMITH drug investigation. JANSSEN's attitude and actions in declining specific information about the SMITH drug investigation led to a call from United States Attorney John Bruce to Chief Assistant District Attorney Howard Cummings (CUMMINGS) regarding his office's concern about BRADY/GIGLIO compliance issues. Prompted by that call, CUMMINGS asked JANSSEN to bring him up-to-date on the status of her home invasion case and about her knowledge of the SMITH drug investigation. Except for

what the United States Attorney told him, CUMMINGS had no prior knowledge of any of these matters.

22. Based upon the memorandum summary of two interviews of Howard Cummings conducted by State Bar Investigator Fred Patton, which are in evidence, and the testimony of CUMMINGS at this hearing, the court finds that CUMMINGS made an appropriate inquiry of JANSSEN to determine if there were any BRADY/GIGLIO/NAPUE issues arising out of a possible overlap or connection between the SMITH drug investigation and the home invasion trial that could require further disclosure. At that meeting JANSSEN advised CUMMINGS that nothing found at the stash house during the search was directly associated with SMITH and that law enforcement did not have anything to link SMITH to what they had found in that search. However, she failed to advise CUMMINGS that she had made no effort to find out the actual results of the search. At that meeting she also failed to advise CUMMINGS that law enforcement investigators had agreed to delay charging SMITH at her request until after the home invasion trial was concluded. CUMMINGS acknowledged that her request to delay charging SMITH would have been a pivotal fact for him to have known.

23. Based upon what JANSSEN told CUMMINGS, he agreed with her assessment that there was no further discovery to disclose at that time. The information that JANSSEN provided CUMMINGS was incomplete and inaccurate. The stash house search had in fact resulted in the seizure of multiple suitcases filled with marijuana and, more importantly, in the seizure of a security surveillance camera installed on the searched premises which depicted video photographs of SMITH carrying those same suitcases of marijuana into the stash house shortly before the search warrant was executed.

24. JANSSEN has testified in this hearing that she was never informed of the results of the search and never attempted to find out any specific information about the status of the search or of the SMITH drug investigation. Therefore, the information she conveyed to CUMMINGS

appears to be based upon inaccurate assumptions she made which were contrary to the actual facts.

25. CUMMINGS was provided incomplete and inaccurate information by JANSSEN and was therefore unable to give her proper informed advice regarding her discovery disclosure obligations.

26. All of the conduct described above is extremely unusual for a prosecuting attorney of JANSSEN's experience and past professional record. It appears clear to the court that there was something about this home invasion case and about the events occurring in JANSSEN's life that impacted her decisions to engage in her unusual course of conduct. If she had been completely candid with her supervisor or with the trial judge about everything she knew, the required disclosures would have been compelled. After the required disclosures were made and due process was thus satisfied, the jury verdict in the SANDY and SURPRIS cases may well have been exactly the same.

27. In early April of 2014 JANSSEN's father was kidnapped by associates of Kelvin Melton (MELTON), an extremely violent and dangerous boss of the *Bloods* gang organization, who JANSSEN had successfully prosecuted for violent crimes resulting in a conviction and the imposition of a life sentence. After MELTON's conviction and sentence were affirmed on appeal, he directed his gang associates to kidnap and kill JANSSEN. MELTON orchestrated this plan to kill the prosecutor in his case from his prison cell by the use of mobile phones. Unable to locate JANSSEN, the perpetrators kidnapped her father and held him for six days before he was rescued by law enforcement officials. He was beaten and subjected to inhumane conditions during this ordeal. He was only moments away from being put to death by the assailants on orders from MELTON at the time of his rescue. He suffered dramatic physical and psychological injuries during this kidnapping and has still not fully recovered. Throughout the period of his kidnapping, JANSSEN was made aware of the dire situation and the improbable likelihood of a successful rescue. JANSSEN appears to blame

herself for what happened to her father, because of the occupation she had chosen and her success in prosecuting dangerous violent felons.

28. The court is of the opinion, based upon all the evidence of record, that the emotional and psychological impact upon JANSSEN resulting from her father's abduction and the intended threat to JANSSEN and her family was nothing short of catastrophic. It appears to the court that JANSSEN, and those around her, failed to fully recognize and comprehend the impact which those events and their emotional trauma had on her work and on her professional judgment. She returned to her prosecuting duties far too quickly and found herself concurrently prosecuting the same types of violent cases in state court that she and her family were participating in as victims in a federal criminal courtroom. When the home invasion case was tried, the federal prosecutions of the perpetrators of crimes against the Janssen family were simultaneously proceeding. Those federal cases have only recently been finally resolved.

29. The court finds that these unique and unusual events played a major role in the thought processing and decision making of prosecutor JANSSEN. Those factors and events caused her to develop a "tunnel vision" focus in her prosecution of the home invasion case and to lose sight of her due process obligations to SANDY and SURPRIS. She lost her professional compass. The events which placed the JANSSEN family in peril carried over into her professional life and significantly impaired her professional insight and judgment. The impact of those events were a major cause of JANSSEN's out-of-character course of conduct which led to the discovery deficiencies in the home invasion case resulting in her violations of the Rules of Professional Conduct.

30. After the SANDY and SURPRIS guilty verdicts were returned by a jury and the imposition of active sentences, SMITH was indicted by a federal grand jury in February of 2015 for conspiracy to possess and distribute marijuana. It was alleged that the conspiracy began in 2012 continuing through 2014 and including the drugs seized during the August 2014 search of the stash

house. He was convicted by a federal jury of those charges and received a lengthy prison sentence.

31. As part of the discovery provided to SMITH in his federal prosecution, the United States Attorney's office provided information to SMITH's defense attorney that charges against SMITH had been delayed, without his knowledge, at the request of JANSSEN. This information came to light when Detective BATTLE's records and reports were made available to SMITH's lawyer.
32. At the request of Appellant Counsel for SANDY, Attorney Paul Green (GREEN), the JANSSEN and BATTLE e-mails were provided to GREEN. He filed a Motion for Appropriate Relief in the North Carolina Court of Appeals, based on the information ultimately revealed in those e-mails.
33. On June 21, 2016 the North Carolina Court of Appeals vacated and remanded the convictions of SANDY and SURPRIS, ordering new trials. The appellate court noted the duty of a prosecutor to learn of any favorable evidence in the case, known to others acting on the government's behalf including the police, and to disclose it. The appellate decision also noted the prosecutor's duty to correct testimony that the prosecutor should have known was misleading or false. The Court of Appeals concluded that JANSSEN's prosecutorial conduct was deficient in both ways.
34. On remand the SANDY and SURPRIS cases were dismissed by District Attorney Lorrin Freeman. Shortly thereafter JANSSEN resigned her position as an Assistant District Attorney on July 8, 2016 and is no longer employed as a prosecutor.
35. A thorough investigation by the North Carolina State Bar found no other instances in which JANSSEN engaged in discovery violations, failures, omissions or deficiencies as a prosecuting attorney. The North Carolina State Bar's investigation also determined that JANSSEN had not misused her official and private e-mail accounts.

36. The court finds as factors in mitigation of discipline that JANSSEN : (1) did not act with the intent to cause harm; (2) was not motivated by self interest or personal gain; (3) did not act with a dishonest or selfish purpose; (4) has no prior disciplinary offenses; (5) has acknowledged and expressed remorse for her deficient conduct; (6) has fully and freely cooperated with the State Bar throughout this investigation; (7) has voluntarily resigned her position as a prosecutor, shortly after these violations were brought to her attention; (8) was suffering from mental trauma, anxiety and stress from the kidnapping of her father and threats on her life and that of her family members by associates of a defendant she had previously successfully prosecuted for violent crimes, which impaired her professional judgment; and, (9) enjoyed a distinguished career in public service for approximately 10 years as a well respected and highly regarded Assistant District Attorney of Wake County.

BASED UPON THE AFORESAID FINDING OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

The United State Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959) recognized legal doctrines regarding constitutional due process rights of an accused that have guided the proper administration of criminal justice over the last 50 years. The government, through the prosecuting attorney, has the obligation in every criminal case to turn over evidence to the accused that is exculpatory or materially favorable regarding the issue of guilt as well as punishment. This obligation includes the disclosure of evidence affecting the credibility of prosecution witnesses. In *Kyles v. Whitley*, 514 U.S. 419(1995) the court made clear the obligation and duty of prosecutors to seek out and discover any favorable evidence known to others acting on the government's behalf in the case, including the police. Courts have interpreted this obligation in such a manner as to impute to the prosecutor all knowledge of the police or investigators in the case. Prosecutors cannot avoid *BRADY* obligations by keeping themselves

ignorant of relevant information or by compartmentalizing information arising out of different aspects of a case.

1. JANSSEN was obligated to conduct a reasonably diligent investigation into all information in the possession of the government relating to SMITH's drug activities and to fully disclose in a timely manner such information to Counsel for SANDY and SURPRIS, which she failed to do. By inserting herself into the SMITH drug investigation and by requesting that SMITH not be charged until after the home invasion case was completed, JANSSEN acquired constructive knowledge of that drug investigation and the ongoing results of that investigation were imputed to her; she failed to obtain timely information concerning the stash house search which revealed SMITH to be a drug dealer and she failed to permit the federal prosecutor to inform her of the status of the SMITH investigation into his drug dealing; she failed to provide her supervisor with complete and accurate information regarding the SMITH investigation; and, by that conduct she did thereby fail to make a reasonably diligent inquiry into evidence and information which she should have known was required to be disclosed by applicable law; she failed to make timely disclosure to the defense of the information she actually knew about the SMITH drug investigation and that which she should have known, including information in possession of the police which was imputed to her, which disclosure was required by applicable law, rules of procedure and court opinions in violation of Rule 3.8(d), and did thereby engage in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and,
2. By failing to correct SMITH's false testimony and by failing to correct the misleading impression SMITH's testimony made on the trial court and jury regarding his involvement in the sale and distribution of controlled substances, which testimony JANSSEN should have known was probably false, JANSSEN failed to take

reasonable measures to insure that there was no false testimony or misrepresentation made to the court and jury; such failure constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

3. The court does not find by clear, cogent and convincing evidence that JANSSEN knowingly made a false statement to the court or jury that she actually knew was false or knowingly offered evidence that she actually knew was false in violation of Rule 3.3(a)(3) and Rule 8.4(c). As to these alleged violations, the Court rules that the State Bar must prove actual knowledge that the testimony or statement is false and the evidence of record does not support such a finding.

BASED UPON THE AFORESAID FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE COURT MAKES THE FOLLOWING:

FINDINGS AND CONCLUSIONS REGARDING PUNISHMENT

1. Assistant District Attorneys prosecuting cases in the Superior Court of this State hold a public office that is critical to maintaining the public trust and confidence in our judicial system. The courts, the general public, persons charged with criminal offenses, victims and witnesses expect a system of justice that is fair, just and administered in strict compliance with the rule of law.
2. Those who hold public office and prosecute persons accused of violating the law must themselves comply with the law. It is imperative to the proper administration of justice that prosecutors adhere to the highest ethical standards and maintain professional objectivity in the exercise of their awesome powers over their fellow citizens. A prosecutor's failure to comply with these ethical standards impugns the integrity of the court system and brings that system into disrepute. That type of failure greatly damages public confidence in the fundamental principles of our democracy.
3. The publicity associated with JANSSEN's conduct has had a negative impact on the public's respect for and confidence in the integrity of the Superior

Court of Wake County and the court's ability to ensure that those charged with serious crimes receive a fair and impartial trial.

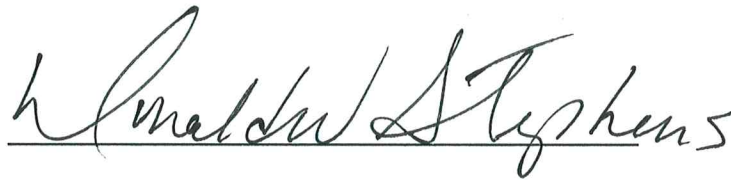
4. Colleen JANSSEN has been unable to provide a satisfactory explanation to this court as to why these series of acts and omissions occurred and appears to lack insight into her own behavior.
5. The court has considered the factors enumerated in 27 N.C.A.C. 1B Sec. .0114(w)(1) and (2) and (3) regarding factors relevant to discipline.
6. Facts previously found by this court as set forth in this order are considered both in aggravation and in mitigation of discipline.
7. The purpose of attorney discipline is not to punish, but rather to protect the public from harm and to correct and protect the public's perception of the integrity of the justice system.
8. The court concludes that the sanction herein imposed will be adequate to preserve the proper administration of justice and prevent or deter future attorney misconduct.

ORDER OF DISCIPLINE

1. For a period of two years Colleen JANSSEN's license to practice law shall be limited and restricted in the following ways: (1) JANSSEN shall not practice law as a prosecutor for any federal, state, county or municipal entity; and, (2) JANSSEN shall not practice law in the employment of any federal, state, county, municipal or private entity or police agency wherein she provides legal advice or legal assistance to any law enforcement officers or law enforcement agencies concerning their official duties.
2. This two-year period of limitation and restriction shall run from the date of this order.
3. During this two-year period of limitation and restriction, JANSSEN shall otherwise be entitled to engage in the practice of law, without any other limitation or restriction, so long as she complies fully with all rules and regulations applicable to members of the Bar of this State.
4. The costs of this proceeding, including depositions, are taxed to JANSSEN. JANSSEN shall pay those costs within sixty days of service of the statement of costs on her by the Secretary of the North Carolina State Bar.

5. JANSSEN shall not violate the Rules of Professional Conduct or the laws of the United States or of any state or local government during this two year period.
6. The court shall retain jurisdiction of this matter throughout the two year period to ensure compliance.

SO ORDERED IS THE 21st DAY OF MARCH, 2017

A handwritten signature in black ink, reading "Donald W. Stephens", written over a horizontal line.

DONALD W. STEPHENS

SENIOR RESIDENT SUPERIOR COURT JUDGE