

JULES EPSTEIN

vs.

VALERIE ARKOOSH

NO. 2020-04978

NOTICE TO DEFEND - CIVIL

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
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100 West Airy Street (REAR)
NORRISTOWN, PA 19404-0268

(610) 279-9660, EXTENSION 201

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

JULES EPSTEIN

vs.

VALERIE ARKOOSH

NO. 2020-04978

CIVIL COVER SHEET

State Rule 205.5 requires this form be attached to any document commencing an action in the Montgomery County Court of Common Pleas. The information provided herein is used solely as an aid in tracking cases in the court system. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Name of Plaintiff/Appellant's Attorney: Eli Segal, Esq., ID: 205845

Self-Represented (Pro Se) Litigant

Class Action Suit Yes No

MDJ Appeal Yes No

Money Damages Requested

Commencement of Action:

Amount in Controversy:

Complaint

Case Type and Code

Miscellaneous: _____

Other _____

Other: VIOLATION OF PA SUNSHINE ACT

Case# 2020-04978-0 Docketed at Montgomery County Prothonotary on 03/23/2020 1:25 PM; Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY,
PENNSYLVANIA, CIVIL DIVISION

Montgomery County Residents Jules Epstein; Sara Atkins; Marc Bookman; Michael Conley; Christine Cregar; Christa Dunleavy; John Fagan; Peter Hall; Chris Koschier; Rev. Beth Lyon; Elena Margolis; Emily Robb; Karl Schwartz; Adrian Seltzer; and Leonard Sosnov,

Plaintiffs,

v.

Valerie Arkoosh, Kenneth Lawrence, Jr., Joseph Gale, and Karen Sanchez, in their official capacities; the Montgomery County Board of Commissioners; the Montgomery County Salary Board; and Montgomery County,

Defendants.

No. _____

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Montgomery County Residents Jules Epstein; Sara Atkins; Marc Bookman; Michael Conley; Christine Cregar; Christa Dunleavy; John Fagan; Peter Hall; Chris Koschier; Rev. Beth Lyon; Elena Margolis; Emily Robb; Karl Schwartz; Adrian Seltzer; and Leonard Sosnov,

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Defendants.

No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

I. INTRODUCTION

1. For decades, the public policy of this Commonwealth has been that citizens have the right to attend all meetings of public agencies where public business is discussed and decided—and to give comment before action is taken in their names. That right of participation and transparency is, in the words of the General Assembly, “vital to the enhancement and proper functioning of the democratic process,” because “secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.” 65 Pa.C.S. § 702. In Pennsylvania, the citizenry’s right to know about and participate in government decisionmaking is protected by the Sunshine Act.

2. The appointment of the Chief Public Defender of the County—an office specifically provided for by the Pennsylvania Constitution, Art. IX, § 4—is one of the most important actions that a County undertakes. In Montgomery County, however, Chief Dean Beer and Deputy Chief Keisha Hudson of the Public Defender Office were summarily terminated and just as summarily replaced by new Chiefs in secret meetings, without public notice or an opportunity to comment. Worse, when citizens of Montgomery County—including Plaintiffs in this action—demanded in a public meeting that the Defendants reconsider this action in public, that demand was refused.

3. Plaintiffs, residents of Montgomery County, have been forced to turn to this Court to compel Defendants to do their legal duty: to hold a public meeting at which they hear public comment *before* taking official action with respect to the firing and/or hiring of the Chief and Deputy Chief Public Defenders of Montgomery County.

4. Plaintiffs have sued the County Board of Commissioners and its members and the County Salary Board and its members because it is impossible to determine from public records which of those entities engaged in the illegal actions set forth in this Complaint. What is clear is that neither of those entities followed the law with respect to public notice and comment prior to the terminations and replacement of the Chief and Deputy Chief Public Defender. The uncertainty as to which body—the Montgomery County Board of Commissioners or the Montgomery County Salary Board—took the official actions in this matter only underscores the significant public harm and violation of the Sunshine Act.

II. JURISDICTION AND VENUE

5. This Court has original jurisdiction over this Complaint pursuant to 42 Pa.C.S. § 931(a)(1) and 65 Pa.C.S. § 715.

6. Venue exists in this Court pursuant to Pennsylvania Rules of Civil Procedure 1006 and 2103 because this action arose in Montgomery County and this is a suit against one or more political subdivisions located within Montgomery County.

III. PARTIES

7. Plaintiff Jules Epstein lives in Elkins Park in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

8. Plaintiff Sara Atkins lives in Wynnewood in Montgomery County. She signed a petition urging Defendants to reinstate Mr. Beer and Ms. Hudson and attended a March 5 rally outside the Board of Commissioners' meeting to protest the terminations.

9. Plaintiff Marc Bookman lives in Wyndmoor in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

10. Plaintiff Michael Conley lives in Narberth in Montgomery County.

11. Plaintiff Christine Cregar lives in Oreland in Montgomery County.

12. Plaintiff Christa Dunleavy lives in Hatboro in Montgomery County.

13. Plaintiff John Fagan lives in Willow Grove in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

14. Plaintiff Peter Hall lives in Jenkintown in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

15. Plaintiff Chris Koschier lives in in Montgomery County.

16. Plaintiff Rev. Beth Lyon lives in Glenside in Montgomery County. She signed a petition urging Defendants to reinstate Mr. Beer and Ms. Hudson.

17. Plaintiff Elena Margolis lives in Cheltenham in Montgomery County. She signed a petition urging Defendants to reinstate Mr. Beer and Ms. Hudson.

18. Plaintiff Emily Robb lives in Narberth in Montgomery County. On March 5, she spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

19. Plaintiff Karl Schwartz lives in Elkins Park in Montgomery County.

20. Plaintiff Adrian Seltzer lives in Wynnewood in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

21. Plaintiff Leonard Sosnov lives in Wyndmoor in Montgomery County. On March 5, he spoke before the Board of Commissioners and asked them to reconsider the terminations of Mr. Beer and Ms. Hudson.

22. Defendant Valerie Arkoosh is a Commissioner and the Chair of the Montgomery County Board of Commissioners and a member of the Montgomery County Salary Board. She lives in Springfield Township in Montgomery County and is sued only in her official capacities.

23. Defendant Kenneth Lawrence, Jr., is a Commissioner and the Vice Chair of the Montgomery County Board of Commissioners and a member of the Montgomery County Salary Board. He lives in Plymouth Meeting in Montgomery County and is sued only in his official capacities.

24. Defendant Joseph Gale is a Commissioner on the Montgomery County Board of Commissioners and a member of the Montgomery County Salary Board. He lives in Plymouth Township in Montgomery County and is sued only in his official capacities.

25. Defendant the Montgomery County Board of Commissioners is composed of the three sitting Montgomery County Commissioners. 16 Pa.C.S. § 3503(a). The Board of Commissioners is an “agency” as that term is defined by the Sunshine Act. 65 Pa.C.S. § 703. A board of county commissioners is empowered by the County Code to issue “resolutions and ordinances prescribing the manner in which powers of the county shall be carried out and generally regulating the affairs of the county,” 16 Pa.C.S. § 509(a), and serves as “the responsible managers and administrators of the fiscal affairs of their respective counties in accordance with the provisions of [the County Code] and other applicable law.” 16 Pa.C.S. § 1701. The Montgomery County Board of Commissioners has the sole authority to appoint and remove the Montgomery County Public Defender. 16 Pa.C.S. § 9960.4; *Sasinoski v. Cannon*, 696 A.2d 267, 272 (Pa. Commw. Ct. 1997).

26. Defendant Karen Sanchez is the Controller of Montgomery County and a member of the Montgomery County Salary Board. She is sued only in that official capacity.

27. Defendant the Montgomery County Salary Board is comprised of the three Montgomery County Commissioners (Defendants Arkoosh, Lawrence, and Gale) as well as the Controller (Defendant Sanchez). The Montgomery County Salary Board is a separate “agency” from the Montgomery County Board of Commissioners as that term is defined by the Sunshine Act. 65 Pa.C.S. § 703. Its duties are set forth by the County Code, 16 Pa.C.S. § 1622, et. seq., and consist of fixing “the compensation of all appointed county officers, and the number and compensation of all deputies, assistants, clerks and other persons whose compensation is paid out

of the county treasury (except employes [sic] of county officers who are paid by fees and not by salary), and of all court criers, tipstaves and other court employes [sic], and of all officers, clerks, stenographers and employes [sic] appointed by the judges of any court and who are paid from the county treasury.” Executive heads of agencies also serve as members of the Salary Board whenever decisions are made regarding “the number or salaries” of employees in their departments. 16 Pa.C.S. § 1625(a). During the March 5, 2020 meeting at issue in this Complaint, the Salary Board consisted only of Defendants Arkoosh, Lawrence, Gale, and Sanchez.

28. Defendant Montgomery County is a Class 2A county and is one of the most populous counties in Pennsylvania, with a population of more than 800,000 people. In 2018, Montgomery County committed 4.7 percent of its population to confinement in state correctional facilities, the fourth highest of any county in Pennsylvania.¹

IV. FACTUAL BACKGROUND

The Sunshine Act

29. The Sunshine Act requires that the decisions of public agencies such as the Montgomery County Board of Commissioners and the Montgomery County Salary Board be made in public and subject to public comment. As the General Assembly explained in its findings supporting passage of the Sunshine Act, the “right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and ...

¹ 2018 Annual Statistical Report, Pennsylvania Department of Corrections at 4, <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2018%20Annual%20Statistical%20Report.pdf>

secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." 65 Pa.C.S. § 702(a).

30. Accordingly, the General Assembly has declared that it is the "public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter." *Id.* at § 702(b).

31. Whenever an agency takes any "official action" as defined by the Act, it must do so "at a meeting open to the public." *Id.* at § 704. In addition, the agency "*shall* provide a reasonable opportunity" for residents "to comment on matters of concern, official action or deliberation which are or may be before the board or council *prior to* taking official action." *Id.* at § 710.1(a) (emphasis added).

32. Recognizing that sensitive matters sometimes require discussion out of the public eye, the Sunshine Act contains a *narrow* exception that allows certain *discussions*—but not *decisions*—to occur in private "executive session." Thus, the Act provides that an agency may hold an executive session:

To *discuss* any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 (relating to administrative law and procedure).

65 Pa.C.S. § 708(a)(1) (emphasis added).

33. In addition to expressly limiting consideration of personnel matters in executive session to mere “discuss[ions],” the Sunshine Act further specifies that any “[o]fficial action on [such] discussions . . . shall be taken at an open meeting.” *Id.* at § 708(c).

34. In other words, the Sunshine Act permits an agency like the Montgomery County Board of Commissioners to *discuss* personnel matters in private (although the agency must allow the impacted personnel to request that the discussion occur at an open meeting). However, any *official action* taken on information discussed during the closed session must occur in public and the public must be permitted an opportunity to comment *prior to* the agency taking official action.

35. Moreover, when an executive session is held, the agency must announce the “reason for holding the executive session” at the next public meeting. *Id.* at § 708(b).

Events Leading up to the Terminations of Mr. Beer and Ms. Hudson

36. Dean Beer became the Deputy Chief Public Defender of the Office of the Public Defender in September 2013 and the Montgomery County Board of Commissioners later appointed him Chief Public Defender in January 2016. Prior to his tenure at the Office of the Public Defender, he served as a public defender in Philadelphia and Charlotte, North Carolina for several decades.

37. Keisha Hudson became Deputy Chief Public Defender in May of 2016. Prior to joining the Office of the Public Defender, she served for ten years as an Assistant Federal Defender for the Federal Community Defender for the Eastern District of Pennsylvania, Capital Habeas Unit. Ms. Hudson began her legal career as a public defender with the Defender Association of Philadelphia.

38. On February 3, 2020, the Office of the Public Defender filed an *amicus curiae* brief with the Supreme Court of Pennsylvania in support of the petitioners in *Philadelphia Community Bail Fund v. Arraignment Court Magistrates*, 21 EM 2019, a case challenging cash bail practices in Philadelphia. The Office filed the brief to share with the Supreme Court the experiences that the Office and its clients have had with cash bail in Montgomery County and the Office’s view, based on these experiences, that cash-bail-related injustices are not a Philadelphia-only problem:

While specific approaches to cash bail practices may differ between counties, the systemic failures found in Philadelphia’s current cash bail practices are ubiquitous throughout the state. Montgomery County is one of many in which the judicial decision-makers of minor courts frequently fail to consider alternatives to cash bail, do not take into account the accused’s ability to pay, and impose excessive bail for the purpose of ensuring pretrial incarceration.

Brief of *Amicus Curiae* the Montgomery County Office of the Public Defender, 21 EM 2019 at 2 (Pa. filed Feb. 3, 2020). The brief went on to describe and criticize the particular cash bail practices of various judges in Montgomery County.

39. The Washington Post reported that two days after the Office filed this brief, President Judge Thomas Del Ricci of the Montgomery County Court of Common Pleas summoned Mr. Beer into his office.² According to Mr. Beer, Judge Del Ricci “excoriated him and demanded that he withdraw the brief,” “threatened to terminate the pretrial services program” that the County was in the process of implementing to reduce judges’ reliance on cash

² Radley Balko, “A Pennsylvania County Fired Its Two Top Public Defenders for Doing Their Jobs,” The Washington Post (Mar. 2, 2020), <https://www.washingtonpost.com/opinions/2020/03/02/pennsylvania-county-fired-its-two-top-public-defenders-doing-their-jobs/>.

bail, “threatened . . . to report Beer to the state bar,” and “suggested that he could have Beer fired.” *Id.*

40. The Washington Post also reported that Mr. Beer said that when he initially met with County officials to discuss what had happened with Judge Del Ricci, they supported Mr. Beer and “told him that . . . Del Ricci’s statements were inappropriate.” *Id.* However, four days later, Montgomery County Chief Operating Officer Lee Soltysiak e-mailed Mr. Beer instructions to “withdraw” the brief on the grounds that Mr. Beer had failed to “communicate[] both with our office and with the courts” prior to filing it. (February 10, 2020 e-mail from Soltysiak to Beer, attached as Exhibit 1).

41. In compliance with Mr. Soltysiak’s instruction, Mr. Beer and the Office of the Public Defender filed a motion with the Supreme Court of Pennsylvania to withdraw the *amicus curiae* brief on February 11.

42. On February 13, Mr. Beer wrote Mr. Soltysiak a letter, asking for “clarification, both regarding the course of events concerning the amicus brief . . . and my independent role as Chief Public Defender.” (February 13, 2020 letter from Beer to Soltysiak, attached as Exhibit 2). The letter asserted that Mr. Soltysiak ordered Mr. Beer to withdraw the brief within hours of a closed-door meeting between Mr. Soltysiak and court administration. *Id.*

43. On February 20, Mr. Soltysiak wrote Mr. Beer a letter in which he expressed that he was “very disappointed in the manner in which” Mr. Beer had sought to advance “overall justice reform.” (February 20, 2020 letter from Soltysiak to Beer, attached as Exhibit 3). Among the examples that Mr. Soltysiak raised was the filing of the *amicus* brief without giving Mr. Soltysiak or County Solicitor Joshua Stein an opportunity to review and comment on it or to request that it not be filed at all. *Id.*

The Terminations of Mr. Beer and Ms. Hudson and Public Reaction

44. Upon information and belief, five days later, on February 25, the Montgomery County Board of Commissioners, comprised of the Defendant Commissioners, held a closed-door and unannounced executive session. To date, no Defendant has explained what occurred at the February 25 executive session, other than to state that it was “regarding personnel matters.”

45. On information and belief, Defendants Arkoosh, Lawrence, and Gale voted at the February 25 executive session on a proposal to terminate Mr. Beer and Ms. Hudson and, at the same executive session, Defendants Arkoosh, Lawrence, and Gale also voted on a proposal to appoint Carol Sweeney and Gregory Nester as co-chief public defenders.

46. On February 26, Mr. Beer and then Ms. Hudson were told by County officials that they had been terminated, effective immediately. On information and belief, after Mr. Beer and Ms. Hudson gathered their personal items, security officers escorted them out of the office. As the Office of the Public Defender is located in the courthouse, this spectacle was witnessed by the employees of the Office, courthouse staff, and members of the public.

47. The same day, the Montgomery County Board of Commissioners issued a press release announcing that, “[e]ffective immediately, the Montgomery County Public Defender’s Office will be led by Carol Sweeney and Greg Nester, who will serve as co-chief deputy public defenders going forward.”³ (February 26, 2020 Press Release, attached as Exhibit 4).

³ Although the press release described Ms. Sweeney and Mr. Nester as “co-chief deputy public defenders,” as is discussed below, the document later approved by the Salary Board instead describes them as “Interim Co-Chief PD.”

48. Defendants Arkoosh, Lawrence, and Gale did not provide the public with an opportunity to provide comment prior to taking official action to terminate Mr. Beer and Ms. Hudson and promote Ms. Sweeney and Mr. Nester.

49. On information and belief, Defendants Arkoosh, Lawrence, and Gale did not inform Mr. Beer and Ms. Hudson about the February 25 executive session prior to its convening or give them an opportunity to request that the matter of their employment be discussed at an open meeting.

50. On information and belief, Mr. Beer and Ms. Hudson were only paid through February 26 and their benefits terminated at the end of that month.

51. Defendants Arkoosh, Lawrence, and Gale failed to make the public aware of the official actions of firing Mr. Beer and Ms. Hudson and promoting Ms. Sweeney and Mr. Nester until after those actions occurred.

52. Nevertheless, the public did respond swiftly to these actions once they were made known. Almost immediately, Montgomery County residents and local organizations condemned the closed-door firings of Mr. Beer and Ms. Hudson and praised Mr. Beer and Ms. Hudson's tireless efforts to cultivate an office known for providing exceptional representation to indigent defendants in Montgomery County. This local outcry was echoed by criminal justice advocates across the country and eventually reached national media outlets, including the New York Times and the Washington Post. Groups including the National Legal Aid & Defender Association, the American Council of Chief Defenders, the Pennsylvania Association of Criminal Defense Lawyers, Gideon's Promise, the National Participatory Defense Network, and the NAACP Pennsylvania State Conference all criticized the firings and urged the Commissioners to reinstate Mr. Beer and Ms. Hudson.

53. On February 28, Defendants Arkoosh, Lawrence, and Gale issued a statement acknowledging that they “have received questions from individuals and organizations regarding Montgomery County’s commitment to cash bail reform and to the Public Defender’s office.” (February 28, 2020 Board of Commissioners Statement, attached as Exhibit 5). The statement went on to state that the Commissioners are “wholly committed to supporting the vitally important work of the Public Defender’s office and their dedication to defending the Constitutional rights of indigent individuals accused of violating the law.” *Id.*

54. Among those who were denied an opportunity to provide the Commissioners with public comment before the terminations were the employees of the Office of the Public Defender themselves. On March 2, twenty-seven current employees of the Office—a majority of the Office—wrote an open letter expressing that Mr. Beer and Ms. Hudson had “earned our support by fiercely and zealously advocating for each and every client, establishing a holistic and trauma-informed approach to Public Defense, engaging in community outreach and organization, striving for policy reform, and serving as strong mentors and support systems to us, their employees.” (Open letter from Public Defenders, attached as Exhibit 6). The employees described the profound dismay the staff felt over the firing, which left them “feeling as if their vision, and ours, is not supported by Montgomery County.” *Id.* They implored Defendants Arkoosh, Lawrence, and Gale to “consider the thoughts and experiences of those of us who most closely worked with Dean and Keisha, those of us who share their vision and wish to see it continue, those of us who understand the high quality representation and advocacy they espoused in the office and in the community, and the partnerships they forged to advance our clients’ interests and the broader issue of criminal justice reform.” *Id.*

55. Local media has featured multiple opinion pieces that are critical of the decision to terminate Mr. Beer and Ms. Hudson. An opinion piece in the Legal Intelligencer noted that the “circumstances surrounding these events raise serious questions about whether public defense in Pennsylvania, especially Montgomery County, is independent and free to advocate openly for the people it is supposed to serve. And the stakes could not be higher. Undermining a defense attorney’s ability to vociferously defend clients should concern us all.”⁴ Similarly, an editorial in the Montgomery County Intelligencer criticized the Commissioners as having “apparently lost sight of the fact that a public defender’s job is to advocate for criminal defendants who cannot afford legal representation. And sometimes that advocacy extends beyond the courtroom in ways that county officials don’t like.”⁵

56. However, prior to firing Mr. Beer and Ms. Hudson, Defendants Arkoosh, Lawrence, and Gale never gave any of the many individuals and organizations who have been so vocal about the terminations an opportunity to share their input with the Commissioners.

57. On March 4, a group of nineteen private criminal defense attorneys who practice in Montgomery County filed an *amicus curiae* brief that was substantially the same as the brief that the Office of the Public Defender had filed and Mr. Beer had been ordered to withdraw. Brief of *Amicus Curiae* Members of the Criminal Defense Bar Who Practice in Montgomery

⁴ Norman Reimer and Miriam Krinsky, “Fear of Reprisals Threatens Independence of Public Defenders and Erodes Right to Counsel,” The Legal Intelligencer (Mar. 4 2020), <https://www.law.com/thelegalintelligencer/2020/03/04/fear-of-reprisals-threatens-independence-of-public-defenders-and-erodes-right-to-counsel/>.

⁵ Editorial Board, “Montgomery County Made a Mess When Its Public Defenders Went Public,” The Intelligencer (Mar. 12, 2020), <https://www.theintell.com/opinion/20200312/editorial-montgomery-county-made-mess-when-its-public-defenders-went-public/1>.

County in Support of Petitioners, 21 EM 2019 at 6-7 (Pa. filed Mar. 4, 2019) (attached as Exhibit 7).

58. In their Application for leave to file that brief, the *amici* defense attorneys wrote that they had “reviewed the Public Defender’s *amicus* brief and, based on” their collective experience of “over 300 years of [] representing criminal defendants in Montgomery County,” believed that the Public Defender’s brief “to be an accurate representation of the bail practices in Montgomery County.” *Id.* Those attorneys explained that, “[d]ue to the accuracy of the Public Defender’s brief, the retaliation against the Public Defender for filing an accurate brief, the illegal and unconstitutional bail practices in Montgomery County, and the importance of bringing the situation in Montgomery County to the Court’s attention,” they felt it “necessary to submit” the *amicus* brief. *Id.*

The March 5, 2020 Commissioners’ Meeting

59. The Montgomery County Commissioners held their next regularly scheduled meeting of the Montgomery County Board of Commissioners on March 5, 2020.

60. At the outset of the meeting, Defendant Arkoosh acknowledged that the Commissioners had held an executive session on February 25, stating: “Finally, I need to mention that an executive session was held on February 25, 2020 regarding personnel matters.” Defendants Arkoosh, Lawrence, and Gale did not provide any other detail about the executive session other than generally describing it as “regarding personnel matters.”

61. Defendant Arkoosh then noted that general public comments would be held at the end of the meeting, after completing all agenda items. The personnel changes in the Public Defender Office were not on the agenda. (March 5, 2020 Board of Commissioners meeting Agenda, attached as Exhibit 8).

62. At the conclusion of the meeting's agenda, and during the meeting's "general comment" period, forty-five individuals gave public comment on Defendant Arkoosh, Lawrence, and Gale's decision to fire Mr. Beer and Ms. Hudson, including many of the Plaintiffs in this action. Several additional people signed up to speak but had to leave because the general public comment period lasted nearly three hours due to the large number of commenters. All of the commenters asked the Commissioners to reverse their decision; not one of the commenters supported the terminations.

63. At the conclusion of the public comment period, Defendant Arkoosh stated that the decision to terminate Mr. Beer and Ms. Hudson had been difficult for her to make because she remained committed to criminal justice reform.

64. Defendant Lawrence stated that "I know that I didn't ask enough questions, I know that I need to demand better answers. I know I didn't educate myself as I should have when this decision was made" and that "I don't want to serve . . . if an action that I fully supported is viewed as hurting the weakest and most oppressed in our community." He, however, then stated that he would not "make a motion," presumably meaning a motion to reinstate Mr. Beer and Ms. Hudson, but rather called for "mediation and reconciliation."

65. Defendant Gale remained silent as to the terminations.

66. Defendant Arkoosh then adjourned the meeting and ordered a brief recess before the Salary Board meeting.

67. At no time during the March 5 Board of Commissioners meeting did the Commissioners vote on whether to terminate Mr. Beer or Ms. Hudson. Instead, they left no doubt that the two had been terminated prior to the meeting.

68. According to news reports, County Solicitor Stein has determined that “employment terminations are not covered under the open meeting law and the only employment actions that require a public vote at an advertised meeting are hiring and changes in salary.”⁶ Indeed, Defendant Arkoosh, Lawrence, and Gale’s position is that they “do not have vote publicly to make Beer and Hudson’s termination official.”⁷

69. While the Commissioners’ meeting took place, a protest simultaneously took place across the street on the steps of the courthouse, where more than 100 people attended to protest the terminations of Mr. Beer and Ms. Hudson.⁸

The March 5, 2020 Salary Board Meeting

70. The Salary Board Defendants held their next regularly scheduled meeting of the Salary Board on March 5, 2020, immediately following the conclusion of the Commissioners’ Meeting.

71. At the beginning of the Salary Board meeting, Defendant Arkoosh asked Mr. Stein to “clarify the role of Salary Board.” Mr. Stein responded: “Salary Board is charged under the law with setting the salary compensations of all county employees. To be clear, while we provide the ‘off-roll,’ or the list of individuals that are separated from county employment for

⁶ Jo Ciavaglia, “Did Montgomery County’s decision to remove its top public defenders violate Sunshine law?” Bucks County Courier Times (Mar. 6, 2020), <https://www.buckscountycouriertimes.com/news/20200306/did-montgomery-countyrsquos-decision-to-remove-its-top-public-defenders-violate-sunshine-law>.

⁷ Joshua Vaughn, “Pennsylvania Public Defenders Not Reinstated Despite Public Outcry Over Firing,” The Appeal (Mar. 6, 2020), <https://theappeal.org/pennsylvania-public-defenders-not-reinstated-despite-public-outcry-over-firing/>.

⁸ Vinny Vella, “Protesters Descend on Montgomery County Commissioners Meeting to Oppose Public Defenders’ Firing,” The Philadelphia Inquirer (Mar. 5, 2020), <https://www.inquirer.com/news/montgomery-county-public-defenders-commissioners-protest-dean-beer-keisha-hudson-20200305.html>.

transparency sake, so that people can see as we add staff who is going off, technically there is no role in Salary Board in actually approving the terminations. Those terminations are decided by each department head.”

72. Donna Pardieu, the Director of Human Resources, then described a document for “Salary Board consideration,” which consisted of various new hires, individuals who were retiring, individuals who were terminated, and salary changes. (March 5, 2020 Salary Board Listing, attached as Exhibit 9).

73. Mr. Beer and Ms. Hudson were listed on the document provided by Ms. Pardieu as “termination.” *Id.* Ms. Sweeney and Mr. Nester were listed on the same document as receiving the new job title “Interim Co-Chief PD” with salary raises. *Id.*

74. Defendant Arkoosh then asked whether there was a motion to approve the Salary Board “presentation” from Ms. Pardieu.

75. Before any motion was put forth, Defendant Sanchez asked Mr. Stein to “clarify again, I heard your statement, but just clarify as far as, I know you said for transparency sake, just clarify: we are not voting on terminations at the Salary Board.”

76. Mr. Stein replied, “That is correct. The only thing that is being approved here are the setting the salaries and compensations for the new hires and any changes in salary such as promotions or otherwise changes [sic].”

77. Defendant Sanchez then moved to approve the presentation, which was unanimously approved.

78. Only *after* approval did Defendant Arkoosh ask whether there was any “general public comment related to Salary Board.” At no time did the Salary Board provide an opportunity for public comment *prior to* voting on the “presentation” from the Director of

Human Resources. While there was a “general” public comment period at the earlier meeting of the Montgomery County Board of Commissioners, that entity is a separate agency from the Salary Board.

79. As is stated above, it appears that the official action terminating Mr. Beer and Ms. Hudson occurred on February 25 at the executive session. In the alternative, the official action terminating Mr. Beer and Ms. Hudson occurred at the March 5 meeting of the Salary Board when it voted to approve the “presentation” from the Ms. Pardieu.

V. CLAIMS

COUNT I

Violation of the Sunshine Act by Taking Official Action in a Closed Executive Session (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, and the Montgomery County Board of Commissioners)

80. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

81. The Sunshine Act requires that whenever an agency takes an “official action,” it must do so “at a meeting open to the public.” 65 Pa.C.S. § 704.

82. Defendants violated the Sunshine Act by taking official action to: 1) terminate Mr. Beer; 2) terminate Ms. Hudson; 3) appoint Ms. Sweeney; and 4) appoint Mr. Nester, without doing so at a meeting open to the public. Those actions are presumptively void.

83. Defendants, through counsel, have publicly stated that they never take a public vote on employment decisions.

84. Defendants were aware of their obligation under the Sunshine Act to take official action only at a meeting open to the public.

85. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT II

Violation of the Sunshine Act by Taking Official Action Without First Taking Public Comment (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, and the Montgomery County Board of Commissioners)

86. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

87. The Sunshine Act requires that agencies “*shall* provide a reasonable opportunity” for residents “to comment on matters of concern, official action or deliberation which are or may be before the board or council *prior to* taking official action.” 65 Pa.C.S. § 710.1(a) (emphasis added).

88. Defendants violated the Sunshine Act by taking official action by: 1) terminating Mr. Beer; 2) terminating Ms. Hudson; 3) appointing Ms. Sweeney; and 4) appointing Mr. Nester without prior public comment. Those actions are presumptively void.

89. Defendants were aware of their obligation under the Sunshine Act to permit public comment prior to taking an official action.

90. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT III

Violation of the Sunshine Act by Not Describing the Matters Discussed at the Closed Executive Session (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, and the Montgomery County Board of Commissioners)

91. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

92. The Sunshine Act requires that, if an agency holds an executive session, then the “reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session.” 65 Pa.C.S. § 708(b).

93. At the March 5 meeting of the Montgomery County Board of Commissioners, Defendants stated only that the February 25 executive session was held “regarding personnel matters.”

94. The reason given by Defendants was legally insufficient because it was not “specific, indicating a real, discrete matter that is best addressed in private.” *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 307-08 (Pa. Commw. Ct. 1993) (description of executive session to discuss matters “of litigation” is legally insufficient).

95. Defendants violated the Sunshine Act by not providing a sufficiently detailed description of the matter discussed, which involved: 1) terminating Mr. Beer; 2) terminating Ms. Hudson; 3) appointing Ms. Sweeney; and 4) appointing Mr. Nester.

96. Defendants were aware of their obligation under the Sunshine Act to describe the reasons for the executive session.

97. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT IV

Violation of the Sunshine Act by Not Providing the Adversely Affected Employees an Opportunity to Ask that the Employment Discussions Take Place at an Open Meeting (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, and the Montgomery County Board of Commissioners)

98. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

99. The Sunshine Act permits agencies to discuss employment matters in executive session, “provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting.” 65 Pa.C.S. § 708(a)(1).

100. Mr. Beer and Ms. Hudson were terminated as a result of the discussion that occurred at the February 25 executive session. However, they were unaware that that discussion was taking place and were not provided an opportunity to request, in writing, that this employment matter be discussed in an open meeting instead of behind closed doors.

101. Failing to provide this opportunity violates the Sunshine Act. *See Easton Area Joint Sewer Authority v. Morning Call*, 581 A.2d 684, 686 (Pa. Commw. Ct. 1990) (finding a violation of the Sunshine Act in a lawsuit brought by newspaper where the agency “repaired to an executive session with the announcement of a ‘personnel matter’” and then reconvened to hold the vote on the official action without giving the employee the “opportunity” to ask for an open meeting on the issue”).

102. Defendants violated the Sunshine Act by: 1) not providing Mr. Beer with an opportunity to request that his employment status be discussed at an open meeting; and 2) not providing Ms. Hudson with an opportunity to request that her employment status be discussed at an open meeting.

103. Defendants were aware of their obligation under the Sunshine Act to permit affected employees to request in writing that the personnel matter discussed at an executive session instead be discussed in an open meeting.

104. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT V

Violation of the Sunshine Act by Taking Official Action Without First Taking Public Comment (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, Sanchez and the Montgomery County Salary Board)

105. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

106. At the March 5 meeting of the Salary Board, Defendants voted to approve the “presentation” from the Director of Human Resources, which included the personnel changes at the Public Defender Office, without first providing an opportunity for the public to provide comment on that official action. Instead, Defendants only permitted the public to make public comments *after* the vote to approve the “presentation.”

107. By taking this official action without first taking public comment, Defendants violated the Sunshine Act. 65 Pa.C.S. § 710.1(a). Those actions are presumptively void.

108. Defendants were aware of their obligation under the Sunshine Act to permit public comment prior to taking an official action.

109. Defendants willfully violated the Sunshine Act by taking this unlawful action.

COUNT VI (in the alternative)

Violation of the Sunshine Act by Taking Official Action Without First Taking Public Comment (against Defendants Montgomery County, Arkoosh, Lawrence, Gale, Sanchez and the Montgomery County Salary Board)

110. Plaintiffs hereby incorporate and adopt each and every allegation set forth in the foregoing paragraphs of the Complaint.

111. In the alternative, if Mr. Beer and Ms. Hudson were not terminated, and Ms. Sweeney and Mr. Nester were not appointed, until the March 5 meeting of the Salary Board, then Defendants violated the Sunshine Act by not providing an opportunity for public comment prior to taking that official action. 65 Pa.C.S. § 710.1(a).

112. The Salary Board is a separate legal entity from the Montgomery County Board of Commissioners and was created by 16 Pa.C.S. § 1622. *See Penska v. Holtzman*, 620 A.2d 632, 634-36 (Pa. Commw. Ct. 1993) (distinguishing between the salary board and commissioners). The makeup of the Salary Board includes both the Commissioners and Defendant Sanchez.

113. Although the Montgomery County Board of Commissioners heard general public comments at the conclusion of its March 5, 2020 meeting—many of which addressed the personnel matters at issue in this complaint—the Salary Board did not hear public comment prior to taking official action at its March 5 meeting.

114. Thus, Defendants violated the Sunshine Act at the March 5 Salary Board meeting by taking official action to: 1) terminating Mr. Beer; 2) terminating Ms. Hudson; 3) appointing Ms. Sweeney; and 4) appointing Mr. Nester without prior public comment. Those actions are presumptively void.

115. Defendants were aware of their obligation under the Sunshine Act to permit public comment prior to taking an official action.

116. Defendants willfully violated the Sunshine Act by taking this unlawful action.

PRAYER FOR RELIEF

Petitioners have only one remedy for the violations of their right to transparency and to have a voice in their local government: a legal challenge to void the illegal acts of Defendants. *See* 65 Pa.C.S. § 713. Petitioners have suffered and will continue to suffer harm as a result of the unlawful acts, omissions, policies, and practices of Respondent, as alleged herein, unless this Court grants the relief requested.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment in their favor and against Defendants and:

- a. Declare that the terminations of Mr. Beer and Ms. Hudson violated the Sunshine Act;
- b. Declare that the terminations of Mr. Beer and Ms. Hudson are void;

- c. Issue an injunction directing the Defendants to reinstate Mr. Beer and Ms. Hudson;
- d. Declare that the official actions appointing Ms. Sweeney and Mr. Nester to replace Mr. Beer and Ms. Hudson violated the Sunshine Act;
- e. Declare that the official actions appointing Ms. Sweeney and Mr. Nester to replace Mr. Beer and Ms. Hudson are void;
- f. Issue a permanent injunction to enjoin the Montgomery County Board of Commissioners and Defendants Arkoosh, Lawrence, and Gale, from taking any employment action by hiring or terminating any individuals without first receiving public comment and taking a public vote at a public meeting on that proposed action;
- g. Issue a permanent injunction to enjoin the Montgomery Country Salary Board and Defendants Arkoosh, Lawrence, Gale, and Sanchez from taking any official action at a public meeting without first receiving public comment on that proposed action;
- h. Award Plaintiffs attorneys' fees; and
- i. Award Plaintiffs costs and such other and further relief that this Honorable Court deems just and appropriate.

Dated: March 23, 2020

Respectfully submitted,

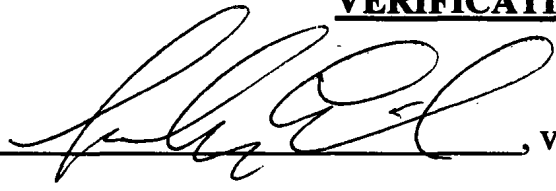


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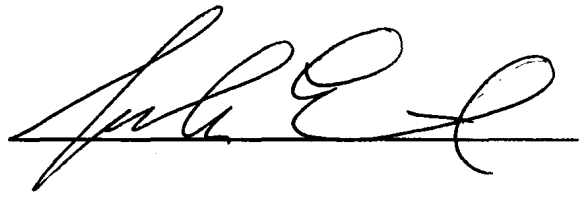
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Andrew Christy
PA I.D. No. 322053
Hayden Nelson-Major
PA I.D. No. 320024
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mroper@aclupa.org

Counsel for Plaintiffs

VERIFICATION

I, , verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/15/20



VERIFICATION

I, Sara Atkins, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/16/2020

Sara Atkins

VERIFICATION

I, Mark Bookman, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 03/15/2020

Mark Bookman

VERIFICATION

I, Michael Corbett, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/17/20



VERIFICATION

I, Christine Cregal, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


Dated: 3/16/20

Christine Cregal

VERIFICATION

I, Christa S. Dunleavy, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3-16-20



VERIFICATION

I, JOHN R Fagan, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/16/20

JOHN R Fagan

VERIFICATION

I, Patrick C. Hall, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/6/20



VERIFICATION

I, Chris Foschier, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/14/20

A handwritten signature in black ink, appearing to be 'Chris Foschier', written over a horizontal line.

VERIFICATION

I, Beth G. Lyon, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/16/2020

Beth G. Lyon

VERIFICATION

I, Elena Margolis, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: March 19, 2020

Elena Margolis

VERIFICATION

I, Emily Robb, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

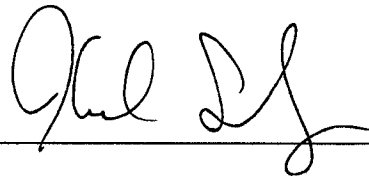
Dated: 3/15/20

Emily Robb

VERIFICATION

I, Karl Schwartz, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

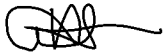
Dated: 3/15/20



VERIFICATION

I, Adrian Seltzer, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/17/2020



VERIFICATION

I, LEONARD SOSNOV, verify that the facts set forth in the foregoing complaint as to me are true and correct to the best of my information, knowledge, and belief. I understand that the statements contained herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 3/16/20

Leonard Sosnov

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: March 23, 2020



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Counsel for Plaintiffs

Case# 2020-04978-0 Docketed at Montgomery County Prothonotary on 03/23/2020 1:25 PM. Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents.

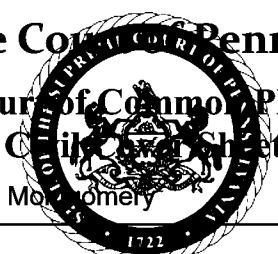
Supreme Court of Pennsylvania

Court of Common Pleas

Civil Cover Sheet

Montgomery

County



For Prothonotary Use Only:	TIME STAMP
Docket No: _____	

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

Commencement of Action:	
<input checked="" type="checkbox"/> Complaint	<input type="checkbox"/> Writ of Summons
<input type="checkbox"/> Transfer from Another Jurisdiction	<input type="checkbox"/> Declaration of Taking
<input type="checkbox"/> Petition	
Lead Plaintiff's Name: Jules Epstein	Lead Defendant's Name: Valerie Arkoosh
Are money damages requested? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Dollar Amount Requested: <input type="checkbox"/> within arbitration limits (check one) <input type="checkbox"/> outside arbitration limits
Is this a <i>Class Action Suit</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this an <i>MDJ Appeal</i> ? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name of Plaintiff/Appellant's Attorney: <u>Eli Segal, Esq.; Mary Catherine Roper, Esq.</u>	
<input type="checkbox"/> Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)	

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

Intentional

Malicious Prosecution

Motor Vehicle

Nuisance

Premises Liability

Product Liability (does not include mass tort)

Slander/Libel/ Defamation

Other: _____

CONTRACT (do not include Judgments)

Buyer Plaintiff

Debt Collection: Credit Card

Debt Collection: Other _____

Employment Dispute: Discrimination

Employment Dispute: Other _____

Other: _____

CIVIL APPEALS

Administrative Agencies

Board of Assessment

Board of Elections

Dept. of Transportation

Statutory Appeal: Other _____

Zoning Board

Other: _____

MASS TORT

Asbestos

Tobacco

Toxic Tort - DES

Toxic Tort - Implant

Toxic Waste

Other: _____

REAL PROPERTY

Ejectment

Eminent Domain/Condemnation

Ground Rent

Landlord/Tenant Dispute

Mortgage Foreclosure: Residential

Mortgage Foreclosure: Commercial

Partition

Quiet Title

Other: _____

MISCELLANEOUS

Common Law/Statutory Arbitration

Declaratory Judgment

Mandamus

Non-Domestic Relations Restraining Order

Quo Warranto

Replevin

Other: Violation of PA Sunshine Act (65 P.A.C.S. 701-716)

PROFESSIONAL LIABILITY

Dental

Legal

Medical

Other Professional: _____

EXHIBIT 1

From: Soltysiak, Lee

Sent: Monday, February 10, 2020 5:12 PM

To: Beer, Dean

Cc: Stein, Josh

Subject: the brief

Dean,

I believe the best course of action regarding the brief is to withdraw it. I believe the lack of communication both with our office and with courts beforehand was a fatal flaw in the strategy and leaves us with very limited options. I do believe there was a way we could have had a different outcome on this issue had the matter been handled differently starting in December and not after the fact in February.

I understand a significant amount of work went into the drafting of the brief, and I commend your office's commitment to our constituents. However, the lack of strategy and internal communication has undermined that work and is what led me to this decision.

Please withdraw the brief immediately.

Thank you,

Lee

Lee A. Soltysiak

Chief Operating Officer

Montgomery County

610-278-1464

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) and may contain legally privileged and/or confidential information. If you are not the intended recipient, please do not disclose, distribute or copy this communication. Please notify the sender that you have received this e-mail in error and delete the original and any copy of the e-mail. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege.

EXHIBIT 2

**MONTGOMERY COUNTY
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, M.D., MPH, CHAIR
KENNETH E. LAWRENCE, JR., VICE CHAIR
JOSEPH C. GALE, COMMISSIONER



OFFICE OF THE PUBLIC DEFENDER

MONTGOMERY COUNTY COURTHOUSE • PO Box 311
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WWW.FACEBOOK.COM/MONTCOPAPD

DEAN M. BEER, ESQ., CHIEF DEFENDER

February 13, 2020

Lee A. Soltysiak
Chief Operating Officer
Montgomery County
(Delivered via email)

Lee,

I am writing this letter to have clarification regarding my role as the Chief Public Defender of Montgomery County. I am also concerned about the status of my employment, in light of the events and statements made to me, as described below. I would like clarification, both regarding the course of events concerning the amicus brief in *Philadelphia Bail Fund vs. The First Judicial District* and my independent role as the Chief Public Defender.

I have been the Chief Public Defender since January 2016. Since that time, I have never sought, nor have I been required to seek, permission from the Commissioners to take positions on behalf of my office and our clients. I have tried to keep the Commissioners informed of what I am doing and why. Consistently, I have had support from the Commissioners' Office on my advocacy on behalf of our clients and my office, both inside and outside the Courthouse.

As a way of background, the Supreme Court of Pennsylvania exercised King's Bench jurisdiction over a lawsuit addressing cash bail practices in the First Judicial District. The issues presented by the Special Master, parties, and participants for Supreme Court jurisprudence included questions about the evidentiary standards relevant to bail determinations, the extent to which other due process protections (such as the creation of a reviewable record) applied at bail

determinations, and whether robust ability-to-pay determinations are required when monetary bail is set as a condition of release. The resulting Supreme Court jurisprudence will thus affect bail determinations throughout the state, including Montgomery County.

Our office was asked by counsel for the Petitioners in the bail litigation, the ACLU-Pennsylvania, to file an amicus brief in support of their position, which included, inter alia, the positions that a robust ability-to-pay hearing is necessary when setting conditions of monetary bail; a clear and convincing evidentiary standard is applicable at bail determination hearings, and that evidence may not be based on hearsay; and such hearings trigger due process protections that call for, among other things, some form of written record explaining the rationale behind bail determinations. These positions are consistent with the position of our office and, in the professional opinion of collective attorneys in the office, promote improved outcomes for our clients across the board. Counsel for petitioners explained that they would be seeking amicus support from various interested parties but that our office was able to contribute from the unique perspective of a non-party county public defender office, a perspective that would encourage the Court to reach the statewide issues that were raised by the Special Master, parties, and participants in a case that arose out of Philadelphia. After much discussion and consultation with legal experts about the importance of demonstrating the reality of pretrial/bail issues that exist outside of Philadelphia, our office determined that it was in the best interest of our indigent clients to participate as amicus by discussing county indigent defense realities outside of Philadelphia County. It is a testament to the individuals in this office that we are respected in the Commonwealth of Pennsylvania as one of the best public defender offices.

Shortly before filing the brief, on February 3, 2020, I sent it to both you and Josh Stein. Josh's response, via email, came late afternoon, after the brief was filed. His concerns were that our brief consisted of complaints and did not advance the litigation of the plaintiffs in the case. The following afternoon, on February 4, 2020, I sent you and Mr. Stein an email explaining why we filed the brief.

Late in the afternoon, on February 5, 2020, Judge DelRicci asked me to come up to his office. He was visibly upset and asked me what I thought I was doing. He picked up a copy of the brief and began telling me that I should not have filed it and that I should have consulted him before filing. I am curious about how Judge

DelRicci received a copy of the brief since it had not been accepted as a public record as of the time he confronted me with it. Nor was he served with it. Judge DelRicci argued that parts of the brief were inaccurate and that we failed to acknowledge that the courts were working to address some of these issues. He also claimed that what we are asking for in the brief is in opposition to what we have supported in the pretrial program. He told me that if I did not withdraw our brief he would no longer support the proposed pretrial program we are working on in the county and he would inform Val (Dr. Valarie Arkoosh) that he no longer wanted the program. I told him I would review his concerns and get back to him.

Understanding how important a pretrial bail program was to our clients, our office, the Commissioners, and me personally, I wanted time to reflect and get your input on this issue. As I have informed Judge DelRicci in the past, I work for the Commissioners and have received positive feedback on that position from both you and Commissioner Arkoosh.

On February 6, 2020, I sent a text to you asking to meet and a meeting was set for Friday at 3pm. At that meeting, Lee Awbrey and I met with you and Josh. Lee Awbrey was the author of the brief and worked with plaintiff's counsel. We discussed many aspects of the brief. I felt it was a positive conversation and that you were generally supportive. One of Judge DelRicci's complaints was that we did not include the work he and others were doing in Montgomery County to address the dire situation outlined in the brief (the facts of which he generally agreed with). I also explained his threats to pull the pretrial program. Both you and Josh were generally supportive. You stated that you wished that we had come to you earlier in the process. You reiterated that Judge DelRicci had no business threatening the Public Defender because I was under the Commissioners' authority. You indicated that you would explain this to Judge DelRicci. Lee Awbrey and I also offered to amend the brief to include the steps the county has taken to address the concerns in the brief. We both left the meeting feeling positive that we would ultimately be supported.

On Monday February 10, 2020, I was in Courtroom 6 handling cases when Judge DelRicci showed up and wanted to speak with me. He asked me if I had made a decision. I told him that I was waiting for the Commissioners' decision since I had spoken with you both. He asked me if I told you about the threat to pull the pretrial program. When I told him yes he was concerned and said he wished I had

not done that. He wanted to speak with Val personally. He then said that must be why you were meeting with Mike Kehs at 11. I told him once I heard back from you I would personally meet with him to give him my decision.

At 12:15 that day, I received your email instructing me to withdraw our brief immediately. You stated "I believe the best course of action regarding the brief is to withdraw it. I believe the lack of communication both with our office and with courts beforehand was a fatal flaw in the strategy and leaves us with very limited options."

My first concern is the clear belief on your (and presumably Josh's) part, that I must communicate with the courts before filing something that affects my clients on behalf of my office. There is no role for judicial oversight of our office, especially when the Judge's concerns seemed to be political in light of his threat to pull the pretrial services program. Additionally, in all of my conversations with you previously, you affirmed the fact that it was improper for Judge DelRicci to tell me what to do or how to represent my office and our clients. You were also concerned that his actions interfered with the authority of the county and Commissioners.

My concern is why the decision changed so drastically and quickly. Within an hour of this meeting with Mike Kehs, your decision changed and you stated I should have communicated with the court about my work. I would like to know why this decision was made. Additionally, you said I should have communicated with you beforehand about the brief. That is a conversation I would like to have in order to better understand when it is required that I consult with you on legal matters and filings. It is problematic because the Public Defender's Office should act independently, outside of the political realm.

After receiving your email, I spoke with Judge DelRicci and I informed him that I would withdraw the brief. He then asked me what I was going to do to fix the problem. He went on to ask me what I was going to do publicly, implying that I needed to let people know I was wrong. I again told him I believed that our brief was accurate and would do nothing more. He was angry with this and also wanted me to apologize to him. I told him that I would not apologize and while I withdrew the brief, I stood by its accuracy.

Also during the conversation, I said that I did what “you guys” wanted me to do. He vigorously said he had no knowledge about what others had asked me to do. He said he had had no communications with you or Josh or anyone else to have me pull the brief.

During that meeting, Judge DelRicci made the following statements:

- He threatened my role as the Chief Public Defender and my ability to advocate in the best interests of our clients. He told me I would no longer be consulted or brought into the conversations regarding criminal court matters, including bail reform. I asked if this position extended to other people in my office, to which he replied, yes, because they work for me.
- He threatened my law license. On Monday he had said that he was thinking about filing a disciplinary board complaint against me. During this latter conversation he said that he had decided to file a disciplinary board complaint.
- He threatened my job. He stated that many people in the county wanted to see me fired but he was not one of them. He stated that a number of times. I believed this was a veiled threat aimed at getting me to back off of the positions I have taken.

Lastly, after that conversation, pursuant to a text to you that we should talk, I received a phone call from Josh. I told him I was now concerned about withdrawing the brief in light of the new threats. Josh agreed with me that Judge DelRicci could not keep me out of the decision-making process and threaten me. Josh said he and you would speak to the Judge. Despite my strong reservations, I followed your instructions and withdrew the brief.

I am concerned that there may be political pressure on the Commissioners’ office for my firing based on the zealous advocacy of myself and my lawyers. I hope that the individuals in Montgomery County who want me fired will not prevail. Additionally, I hope I have the support of the Commissioners with respect to the independence of this office from judicial pressure. I cannot be an effective advocate if I have to consult with the Courts about my work.

Attached to this letter is a copy of the ABA Ten Principles Of A Public Defense Delivery System. The first principle states, “The public defense function, including the selection, funding, and payment of defense counsel, is independent.” An

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Attached to this letter is a copy of the ABA Ten Principles Of A Public Defense Delivery System. The first principle states, “The public defense function, including the selection, funding, and payment of defense counsel, is independent.” An

independent public defenders' office is important to our clients, our office, and the citizens of Montgomery County. I have confirmed that with Robert Tintner, Esq., who handles the Ethics Hotline for the Philadelphia Bar Association.

Thank you for reading this letter. I hope that you understand my concerns about our office's independence and my ability to be an effective advocate for this office. I appreciate the past support you and the Commissioners have given to this office and me and I look forward to our future work together.

Thank you,

Dean M. Beer
Chief Public Defender
Montgomery County

CC: Josh Stein, Esq. (via email)

SERVING THE WHOLE COMMUNITY, TO MAKE THE COMMUNITY WHOLE

EXHIBIT 3

**MONTGOMERY COUNTY
BOARD OF COMMISSIONERS**

VALERIE A. ARKOOSH, MD, MPH, CHAIR
KENNETH E. LAWRENCE, JR., VICE CHAIR
JOSEPH C. GALE, COMMISSIONER



**OFFICE OF THE CHIEF CLERK
CHIEF OPERATING OFFICER**

PO Box 311
NORRISTOWN, PA 19404-0311
610-278-3020

WWW.MONTCOPA.ORG

LEE A. SOLTYSIAK
CHIEF OPERATING OFFICER

February 20, 2020

Dean Beer
Chief Public Defender
Montgomery County

Dear Dean:

I'm writing this letter in response to your February 13th, 2020 letter requesting clarification of your role as the Chief Public Defender of Montgomery County. There is no question that your intentions in regards to providing quality representation to clients are genuine. Moreover, the administration has been supportive of many of the positions you have taken with respect to overall justice reform. However, in my role as COO, I have been very disappointed in the manner in which you have sought to advance those positions on a number of occasions.

For example, in August 2019, I met with you regarding your improper use of County legal interns from your office for a project that was outside the scope of your job as Montgomery County Public Defender. Specifically, you and Chief Deputy Keisha Hudson directed summer legal interns at the County to use County resources to research social media posts of police officers in several different municipalities for the purpose of providing information to the Philly Voice.

The County Employee Handbook prohibits use of County equipment and staff for anything other than official County business unless the use is "de minimus." The news article that was ultimately published by the Philly Voice concerning the results of the research stated that a team of researchers was assigned "to scour social media posts from as many officers in Montgomery County's 51 municipal police departments as they could find."

Clearly this project did not involve a "de minimus" use of County equipment and staff. Further, it was outside the scope of what you and those in your office are tasked to do, as the research was not related to any cases being handled by your office. Rather, it was intended to mirror similar research done by the Plain View Project after the Plain View Project declined to undertake the research in Montgomery County. Your use of County equipment and staff for this outside project also violated the County Ethics Policy.

Moreover, while you were working on this project that was certain to draw public attention, you failed to communicate with me. It was only after you had provided all of the background information to the press did you contact me to give me a "heads up" that a reporter had reached out to you for a comment. While I am supportive of the goals you were attempting to achieve with this project, I cannot condone the process you employed in gathering the information. Coordination and earlier communication with me and others in County Administration could have resulted in a process that would have been more appropriate and beneficial in achieving the goal you were trying

to advance. The course of action you chose to take most likely undermined your efforts to shed light on an important issue.

In January, you raised questions about the phone rates of GTL at the Youth Center. Again, rather than bringing those concerns directly to me, your office filed a Right to Know request to obtain a list of all calls placed by juvenile residents for the preceding year. Fortunately because of the sizeable information sought, the request was brought to the attention of County Solicitor, Josh Stein. Josh immediately contacted you to discuss the basis for the request and only then did you express the concern that the phone rates at the Youth Center were too high. Within hours after Josh contacted you about the Right to Know request, he addressed the issue and confirmed with GTL that thereafter the phone rates at the Youth Center would be the same as the rates for County Prison.

Once more, if you had brought this to my attention when you first became aware of the issue more than a month earlier, it could have been addressed much sooner and in a more appropriate and less adversarial fashion. However, you seem determined to work against County administration instead of along with it.

The situation with the recent filing of a brief in the ACLU cash bail case before the Pennsylvania Supreme Court is very similar. You know that the administration is in favor of the reform sought in the case and in fact, you are aware that changes to the pre-trial process in Montgomery County have been budgeted for and are being pursued. In an effort to advance this issue state-wide, you put at risk the collaborative efforts of your office, the Courts, the District Attorney, and County Administration to bring about a positive change in bail practices for your clients in Montgomery County.

Rather than alerting me in December that the ACLU had requested you file an amicus brief, you waited until February to forward a brief to Josh and I that was filed before we were afforded any time for meaningful comment. All briefs in the case, including amicus briefs, had been due to be filed with the Supreme Court no later than January 30, 2020. Therefore, there was no time constraint for filing the brief which was filed Nunc Pro Tunc. Even though you were not required to file the brief on February 3rd, you filed it before Josh or I had an opportunity to review and provide comments. The fact that you forwarded the brief prior to filing, and then subsequently filed without waiting for feedback indicates to me that you were well aware, not only that comments would be forthcoming, but that there was a strong chance those comments would include a request to amend or refrain from filing the brief at all.

To be clear, the President Judge has not influenced my evaluation of your performance. I expect, as I do with all Department Heads, that the Chief Public Defender show good judgment and follow the policies of the County in performance of duties. There is no question that you do not report to the Courts or require the approval of Courts for anything you are responsible for, and nothing of the sort has been said or implied. However, the ability to work collaboratively wherever possible with other groups on clearly common goals would undoubtedly be more effective.

As the Public Defender of Montgomery County, you are appointed by the County Commissioners, and tasked under the Pennsylvania Public Defender Act with furnishing legal counsel to any person who, for lack of sufficient funds, is unable to obtain it. Your function as it pertains to that mandate

is where a minimal amount of oversight is necessary. You, and your staff, are zealous advocates for those you are tasked with defending, and your work in that regard is appreciated beyond measure.

It is when you choose to act outside of that scope that your conduct has proven to be as frustrating as it is puzzling. I would have welcomed, and quite frankly expected, the opportunity to work with you and your office on these issues on the front end when we could develop an appropriate strategy to make progress on these important matters. I am certain we would have worked together to develop a plan focused on how best to accomplish the goals. Instead, you have chosen to go-it-alone and repeatedly ignore county policy along with the advice given by me and others on numerous occasions which has undermined the very issues you are advocating for each and every time.

The ability of the Public Defender to function independently in the representation of indigent clients in Montgomery County is important. What is also important is the ability of the head of that department to realize the broader implications of acting on certain desired reforms in a manner that is outside the intended scope of the position. Your repeated inability to realize when it is both beneficial and appropriate to engage with me, the Commissioners, or the Solicitor before taking a particular action is deeply concerning.

You have requested clarification on your role as the Chief Public Defender for Montgomery County. The fact that you have been in your position for almost four years, have demonstrated numerous instances of questionable judgment, and just now seek a review of your position demonstrates the concerns that I have in your work for Montgomery County.



Lee A. Soltysiak
Chief Operating Officer
Montgomery County

EXHIBIT 4



NEWS

MONTGOMERY COUNTY BOARD OF COMMISSIONERS

VALERIE A. ARKOOSH, MD, MPH, CHAIR
KENNETH E. LAWRENCE, JR., VICE CHAIR
JOSEPH C. GALE, COMMISSIONER

Contact:

John Corcoran, Director of Communications

610-278-3061

jcorcora@montcopa.org

FOR IMMEDIATE RELEASE: FEB. 26, 2020



Montgomery County Announces New Leadership at Public Defender's Office

Norristown, PA (Feb. 26, 2020) – Effective immediately, the Montgomery County Public Defender's Office will be led by Carol Sweeney and Greg Nester, who will serve as co-chief deputy public defenders going forward.

Carol is currently Case Management Chief and Greg serves as Chief of the Mental Health Unit. Both are senior leaders who will bring their experience, skills and expertise to bear in leading the office and ensuring our most vulnerable residents receive high-quality representation while also moving forward on needed reforms and partnerships to improve the justice system.

Montgomery County is dedicated to implementing initiatives that reduce recidivism, provide diversionary programs and treatment options to eliminate the need for incarceration and improve outcomes for those released from prison, all while protecting the safety of our communities. These initiatives are a collaborative effort that involve many of our county offices and partner agencies.

Carol is a graduate of Penn State and the Widener University Delaware School of Law. She began her career in the Montgomery County District Attorney's Office where she was head of the Narcotics Enforcement Team and co-chief of the Trial Division. She was in private practice for 15 years before joining the Public Defender's Office in 2008. She has been the Case Management Chief for three years, supervising 24 trial attorneys, and is the Behavioral Court liaison.

Greg is a graduate of Indiana University and the Indiana University School of Law – Indianapolis. He has been with the Public Defender's Office for over 10 years and was previously Chief of the Pre-Trial Unit.

EXHIBIT 5



MONTGOMERY COUNTY BOARD OF COMMISSIONERS

Cash Bail Reform Statement from Montgomery County

We have received questions from individuals and organizations regarding Montgomery County's commitment to cash bail reform and to the Public Defender's office.

We remain wholly committed to supporting the vitally important work of the Public Defender's office and their dedication to defending the Constitutional rights of indigent individuals accused of violating the law. Their zealous advocacy on behalf of their clients must continue to extend beyond the courtroom, and their efforts to provide a holistic approach to the extra-legal concerns of those they represent is a model for Public Defenders offices across the country.

Montgomery County is in full support of justice reform efforts and specifically cash bail reform. We recognize that people of color as well as economically disadvantaged people are disproportionately impacted by our justice system. Pennsylvania ranks 7th highest in the nation for racial disparity for incarcerated people. We know this impacts not only individuals, but their families, neighborhoods, and communities. We are committed to developing strategies to combat this injustice.

In early 2019, the County and Courts began a collaborative effort across County departments to develop an alternative to cash bail that could eliminate pre-trial detention of individuals that have been charged with certain crimes, simply because of their inability to pay bail. This administration wants to put an end to people being held in pre-trial detention solely for economic reasons.

This team includes representation from the Public Defenders' Office, District Attorneys' Office, Courts, Prison, Commissioners Office, and Adult Probation. This group has been working together, reviewing various program models across the state and country. Representatives from these offices traveled to Pittsburgh to view Allegheny County's model pre-trial services program, and researched others around the country for best practices to develop our own program here in Montgomery County.

Based upon this work, the team presented a plan to the County Commissioners to fund a comprehensive Pre-Trial Services Unit in the 2020 budget. The Chair and Vice Chair of the Board of Commissioners gave their full support for this plan and voted to include a new position in the 2020 county budget to launch this initiative. This position was advertised in January 2020; interviews are underway and this role will be filled shortly.

Montgomery County is dedicated to eliminating the negative impacts currently felt by many people of color as well as economically disadvantaged members of the community due to the current cash bail system. The creation of the Pre-Trial services program is a significant step in the ongoing effort for meaningful and equitable justice reform in Montgomery County.

- February 28, 2020

EXHIBIT 6

We, as individuals who are current members of the Montgomery County Public Defender's Office, write in support of our former Chiefs, Dean Beer and Keisha Hudson. They earned our support by fiercely and zealously advocating for each and every client, establishing a holistic and trauma-informed approach to Public Defense, engaging in community outreach and organization, striving for policy reform, and serving as strong mentors and support systems to us, their employees. A vast majority of us were hired by Dean and Keisha and we came from other Public Defender Offices, other fields of social justice, from judicial clerkships, and other passions because we saw and respected the vision that Dean and Keisha fostered for an independent office that tirelessly advocated within the courthouse and within the community. The Mission Statement of the Office is:

“The Montgomery County Office of the Public Defender fights for every client, recognizing their individualized experiences. We champion change by being the voice that demands justice and fairness for all. We are administrative support clerks. We are investigators. We are social workers. We are paralegals. We are attorneys. Together, we are Public Defenders.”

Following the events of the last week, we are left feeling as if their vision, and ours, is not supported by Montgomery County. To witness our Chiefs fired, in serial fashion, escorted from the Office by security, given no opportunity to stop to explain their dismissal or to check on the staff they had recruited and advocated for daily was deeply upsetting, and created a sense of confusion, fear, and had a chilling effect on those of us who remained. We were left to question the independence of the Office, the impact of our advocacy, and whether such advocacy would be limited. We have been provided no explanation for the firings—all we have been told is that they have been replaced, and we then received a subsequent follow-up statement detailing the County's commitment to indigent defense, the Office, and the County's support of a pretrial services program and bail reform.

While we are grateful to hear that the County supports us, and a Pretrial program, it remains deeply concerning that the actions of the last few weeks may speak louder than any words. The Office of the Public Defender had submitted an amicus brief, in support of bail reform, to the Pennsylvania Supreme Court. We were asked to file this in support of state-wide bail reform, and to shine a light on the issues of pretrial detention and cash bail. The amicus brief provided specific examples of people who suffered as a result of cash bail in Montgomery County. Shortly after its filing, the amicus brief was withdrawn. Then our Chiefs were fired. Given the close proximity of those events, it is hard to not draw a direct line between the brief and the firings. It is also difficult to

understand how a brief, advocating for bail reform, would not advance the interests of a county pretrial services program. The seeming influence over our Office's ability to advocate for policy initiatives is deeply concerning. This is particularly true where Dean and Keisha consistently encouraged us to zealously advocate for each individual client, while also recognizing and striving for overall criminal justice reform.

As Public Defenders, our mission extends beyond the individual client and the individual case. Our mission necessarily includes exposing systemic issues, and tackling them with the same advocacy that we utilize in a courtroom. Dean and Keisha exemplified this with their work in the office, and the community. They have established and maintained relationships with numerous stakeholders in the community, providing partnership opportunities and increasing our involvement and interaction with community issues. Some of these local partnerships and programs include: Legal Aid of Southeastern Pennsylvania; Pottstown Trauma Informed Community Connection; Youth Law Enforcement Forums in Pottstown, Jenkintown, Norristown, and Cheltenham; Youth Courts in Norristown High School, Pottstown Middle School, and Cheltenham High School; numerous law schools for clinics and practicums including appellate clinics with Penn and Drexel, and an expungement clinic with Villanova, and The Juvenile Law Center, who provided assistance on juvenile lifer cases and data collection on juvenile fines and costs issues. Dean and Keisha were also responsible for establishing a satellite Public Defender Office in June 2016, which has served nearly 1000 clients to date and was an important step in easing access to the services of our office. Additionally, Dean and Keisha were instrumental in continuing a Participatory Defense Hub, one of the first in the country, which helps family members navigate the criminal justice system, and provides them the power to assist in their loved-one's case. Additionally, Dean and Keisha have created training partnerships with the Public Defender's Association of Pennsylvania (PDA), The Pennsylvania Association of Criminal Defense Lawyers (PACDL), the National Association for Criminal Defense Lawyers (NACDL), Pennsylvania Bar Institute (PBI), and Gideon's Promise. Not only can employees attend these trainings, but several staff members serve as faculty on these programs. Gideon's Promise, in particular, provides a multi-year training program for our young hires that allows them to not only learn best practices, but to have a community of support as they navigate the early years of Public Defense.

These partnerships and community outreach often necessitated long hours, both in the office and in the community for Dean and Keisha. The number of evenings that Dean remained in the office past 7, only to then run to community events is beyond count. However, he never complained because he believed that our work in the community was equally as important as our work in the courtroom. Additionally, both Dean and Keisha routinely demonstrated that they were willing to share our workload by providing coverage in the Pottstown Satellite Office and the Criminal Miscellaneous List, representing clients in preliminary hearings and probation revocations, and, recently,

Keisha served as second chair in a Homicide case. Dean and Keisha did not just talk the talk, they actively and consistently walked the walk. This level of commitment inspired us every day. To know that they had our backs, that they were in the fight too, that they recognized and understood the challenges of our work was invaluable.

Under their leadership, the Office now receives nationwide applicants for attorney positions and interns. Our Office's prominence has risen under their leadership, and it would be unfortunate if these recent events jeopardized our partnerships or our respect within the Public Defense or Montgomery County Communities. The citizens of Montgomery County deserve a Public Defender's Office that protects their rights above all other interests. We can say with commitment, heart, and passion, that Dean and Keisha ensured that the citizens received exactly that promise.

You may notice that we have referred to our Chiefs by their first names throughout—that is because they have always treated us as people, not just employees. They have assisted us with case strategy, expert funding, our personal community outreach, training, and development. They have lent us their strength by standing alongside us as we take verdicts or hear the results of challenging sentencing proceedings. To know that your bosses care about you personally matters. This work can be hard, and it takes a village, and we have been so grateful to have Dean and Keisha as the leaders of our village.

We ask that the County Commissioners consider the thoughts and experiences of those of us who most closely worked with Dean and Keisha, those of us who share their vision and wish to see it continue, those of us who understand the high quality representation and advocacy they espoused in the office and in the community, and the partnerships they forged to advance our clients' interests and the broader issue of criminal justice reform.

To be clear, our current leadership, Greg Nester and Carol Sweeney, have our full support. They have earned and deserve our respect, and their dedication to us and the office is unquestioned. However, we are deeply troubled by the events that led to Dean and Keisha's firing. As such, we feel that both the Commissioners and our county citizens deserve to know that Keisha and Dean were strong advocates, supportive bosses, and great community partners. As those of us who worked hand and hand with them daily, we cannot let our respect, appreciation, and support for them go unstated. We also take this opportunity to note that zealous representation requires independence from outside influence. We cannot effectively advocate if we are beholden to Courts or County Officials or fear reprisal for our advocacy.

We ask that the Commissioners reconsider this action, and reinstate Dean Beer and Keisha Hudson as leaders of our office.

We also make a promise to the citizens of Montgomery County that we remain fully committed to zealous advocacy in the courtroom and in the community.

Carrie Allman	Ravi Marfatia
Vanessa Bellino	Brie Halfond
Lauren Zitsch	Rachel Silver
Josh Thorn	Madison Leonard
Mike Daly	Marissa McGarry
Jeff Matus	Jacqui Robbins
Erin Boyle	Elizabeth Brogan
Katie Ernst	Amanda Deptula
Alana Hook	Katie Cronin
Molly Marcus	Meghan Scharbacher
Emily Sieber	Julia Lucas
Mike Sontchi	Lee Awbrey
Kari Grimrud	
Adrienne Kosinski	
Martin Lock	

EXHIBIT 7

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

21 EM 2019

**THE PHILADELPHIA COMMUNITY BAIL FUND, *et al.*,
*Petitioners,***

v.

**ARRAIGNMENT COURT MAGISTRATES OF THE FIRST
JUDICIAL DISTRICT OF THE COMMONWEALTH
OF PENNSYLVANIA,
*Respondents.***

ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of the Application of Members of the Criminal Defense Bar Who Practice in Montgomery County for Leave to File an *Amicus Curiae* Brief *Nunc Pro Tunc* in Support of Petitioners, it is hereby ORDERED that the Application is GRANTED. The Prothonotary is directed to accept the *amicus curiae* brief attached to the Application for filing.

By the Court:

J.

Case# 2020-04978-0 Docketed at Montgomery County Prothonotary on 03/23/2020 1:25 PM; Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

21 EM 2019

THE PHILADELPHIA COMMUNITY BAIL FUND, *et al.*,
Petitioners,

v.

ARRAIGNMENT COURT MAGISTRATES OF THE FIRST
JUDICIAL DISTRICT OF THE COMMONWEALTH
OF PENNSYLVANIA,
Respondents.

APPLICATION OF MEMBERS OF THE CRIMINAL DEFENSE BAR
WHO PRACTICE IN MONTGOMERY COUNTY FOR LEAVE TO FILE
AN *AMICUS CURIAE* BRIEF *NUNC PRO TUNC* IN SUPPORT OF
PETITIONERS

Pursuant to Pa. R.A.P. 531(b)(1)(iii), Applicants, members of the criminal defense bar who practice in Montgomery County, respectfully request relief in the form of leave to file *nunc pro tunc* the attached *amicus curiae* brief. In support of this Application, Applicants aver as follows:

1. The Amended Petition for Extraordinary Relief Under the King's Bench Jurisdiction and resulting Report of the Special

Master involve the important question of the operation of cash-bail practices in the First Judicial District.

2. The issues presented in this case, however, are prevalent in counties throughout the state, including Montgomery County.
3. This Court's enforcement of existing rules that govern cash-bail practices, and clarification of the applicable evidentiary standards and other due process requirements, will directly affect persons accused of crimes in Montgomery County. The standards and procedures applied by the First Judicial District that result from this Petition will also operate as a model for practices in other counties, such as Montgomery County.
4. The Applicants represent individuals at all stages of their criminal proceedings and have a substantial interest in this matter. The law governing bail practices directly affects our clients, their families, and the communities we serve.

5. The Applicants have, collectively, over 300 years of experience representing criminal defendants in Montgomery County.
6. The Montgomery Office of the Public Defender filed its own *amicus curiae* brief in this matter on February 3, 2020, and this Court granted leave and deemed its brief timely filed on February 11, 2020.
7. On February 11, 2020, the Montgomery County Office of the Public Defender filed to withdraw its brief. Then, on February 26, 2020, the Chief and Deputy Chief of the Montgomery County Office of the Public Defender were abruptly fired by the Montgomery County Board of Commissioners, apparently in response to the *amicus* brief in this matter.
8. Applicants have reviewed the Public Defender's *amicus* brief, and, based on the above-referenced experience, believe it to be an accurate representation of the bail practices in Montgomery County.

9. Due to the accuracy of the Public Defender's brief, the retaliation against the Public Defender for filing an accurate brief,¹ the illegal and unconstitutional bail practices in Montgomery County, and the importance of bringing the situation in Montgomery County to the Court's attention, Applicants felt it necessary to submit the attached *amicus* brief.
10. The *amicus* brief submitted by Applicants is substantially the same as the one filed on February 3, 2020, by the Montgomery County Office of the Public Defender.
11. Applicants would not be filing their *amicus* brief this late but for the unique circumstances presented by the Public Defender's withdrawal of its brief and subsequent retaliatory firings.

¹ "The circumstances surrounding these events raise serious questions about whether public defense in Pennsylvania, especially Montgomery County, is independent and free to advocate openly for the people it is supposed to serve." Norman L. Reimer & Miriam Aroni Krinsky, *Fear of Reprisals Threatens Independence of Public Defenders and Erodes Right to Counsel*, The Legal Intelligencer, posted 4 March 2020 at 1:55 p.m., available at <https://www.law.com/thelegalintelligencer/2020/03/04/fear-of-reprisals-threatens-independence-of-public-defenders-and-erodes-right-to-counsel/>

12. The parties will not be prejudiced by the Court's acceptance of the Applicant's brief *nunc pro tunc* because it is substantially the same as the Public Defender's brief, which was filed over a month ago.

WHEREFORE, members of the criminal defense bar who practice in Montgomery County respectfully request that the Court grant leave to file the attached *amicus curiae* brief *nunc pro tunc* in support of Petitioners.

Respectfully submitted,

/s/ Jason E. Parris

Jason E. Parris, Esq.

I.D. No. 312363

Abramson & Denenberg, P.C.

1315 Walnut Street, Suite 500

Philadelphia, Pennsylvania 19107

(215) 546-1345

jparris@adlawfirm.com

Date: March 4, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non- confidential information and documents.

/s/ Jason E. Parris
Jason E. Parris, Esq.
I.D. No. 312363
Abramson & Denenberg, P.C.
1315 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19107
(215) 546-1345
jparris@adlawfirm.com

Date: March 4, 2020

EXHIBIT 8



MONTGOMERY COUNTY BOARD OF COMMISSIONERS

VALERIE A. ARKOOSH, MD, MPH, CHAIR

KENNETH E. LAWRENCE, JR., VICE CHAIR

JOSEPH C. GALE

Agenda

March 5, 2020

- A. Call to Order
- B. Roll Call and Pledge of Allegiance
- C. Commissioners' Comments
- D. Approval of Minutes
 - 1. February 20, 2020
- E. Announcements, Commendations & Reports
 - 1. Coronavirus Update – Michel Masters, Director of Communicable Diseases/Public Health and Todd Stieritz, Public Safety/Public Affairs Coordinator
- F. Resolutions
 - 1. Authorization of Municipal Community Planning Assistance Contracts for Collegeville Borough, West Norriton Township, and Abington Township – John Cover
 - 2. Authorization to apply to the Delaware Valley Regional Planning Commission for a Transportation and Community Development Initiative Grant – Brian Olszak
 - 3. Authorization to apply for DCNR grant funding for a conservation and trail easement on the Camp Laughing Waters property in New Hanover and Upper Frederick Townships – John Cover
 - 4. Authorization for Emergency Replacement of an Electrical Transformer at One Montgomery Plaza – Tom Bonner
- G. Advertisement of RFPs - Montgomery County
 - 1. RFP on behalf of Commerce for Career Development Content Services
 - 2. RFP on behalf of Commerce for Computer Skills Training
 - 3. RFP on behalf of Commerce for Assessment Services
 - All RFPs & Bids are available on the County's Purchasing website: www.montcopa.org/Purchasing
- H. Awards of Contract – Montgomery County

1. Contract Award – Assets & Infrastructure – Engineering – CMC Engineering of Kimberton, PA - \$30,100.00
2. Contract Award: Assets & Infrastructure – Design Services – HRM Architects of Princeton, NJ - \$83,065.00
3. Contract Award: ITS - Maintenance – Infor (US), Inc., of Alpharetta, GA - \$278,839.04
4. Contract Award: ITS - Support Agreement – Microsoft Corporation of Redmond, WA - \$241,834.63
5. Contract Award: ITS – Aerial Imagery Services - Nearmap US Inc. of South Jordan, UT - \$70,000.00 per year
6. Contract Award: Public Safety - Software – CDW Government of Chicago, IL - \$42,735.00
7. Contract Award: Voter Services – Equipment – E. Thomas Brett Business Machines of Horsham, PA - \$23,368.00
8. Contract Award: Voter Services - Advertising – Montgomery Newspapers of Dallas, TX - \$22,500.00
9. Contract Renewal: Human Resources - Commercial Insurance Broker: - KMRD Partners, Inc. of Warrington, PA - \$135,000.00
10. Contract Renewal: ITS - Wiring Services- Atlantic Coast Communications NJ Inc. of Pennsauken, NJ - \$145,000.00
11. (1) Contract, (4) Contract Renewals and (3) Amendments for Health and Human Services

➤ Providers and Services are listed in the front of the room

I. Awards of Contract – Southeast PA Regional Task Force

1. Contract Award: Equipment - Selex ES Inc. dba Leonardo/ELSAG of Greensboro, NC - \$21,097.75
2. Contract Renewal: Managed Services – Mission Critical Partners of Port Matilda, PA - \$144,180.00

J. General Public Comment – limited to 5 minutes

K. Closing Commissioners’ Comments

L. Upcoming Meeting Dates

1. March 19, 2020

M. Adjournment

N. Salary Board

O. General Public Comment – limited to 2 minutes

P. Adjournment

Office of Health and Human Services

Office of Behavioral Health & Developmental Disabilities

Contract Amendment			
Office of Developmental Disabilities			
2019/2020	Prior Contract	Decreased/ Increased	Revised Contract
Budget No. 62501-655040	Amount	Amount	Amount
Advance Lane Training and Employment Corporation	\$150,234.00	\$10,453.00	\$160,687.00
Twin Park Industrial Center 3151 Advance Lane Colmar, PA 18915			

Prior Res. No. 328

Contract Renewal		
Office of Developmental Disabilities		
2019/2020	Services Provided	Contract Amount
Budget No. 62601-655040		
Temple University Institute on Disabilities	Residential and day monitoring.	\$55,000.00
3340 N. Broad Street Student Faculty Center Philadelphia, PA 19140		

Contract Amendment			
Office of Drug and Alcohol			
2019/2020	Prior Contract	Decreased/ Increased	Revised Contract
Budget No. 62801-655040	Amount	Amount	Amount
Valley Forge Medical Center			Fee for Service
1033 W. Germantown Pike Norristown, PA 19403			

Adult, Male and Female, IDU, Pregnant Women

Medically Managed Intensive Inpatient Withdrawal Management Services 4-WM (834A)	0	\$589.37/FFS
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Contract Renewals		
Office of Mental Health		
2019/2020	Services Provided	Contract Amount
Budget No. 62701-655040		
Access Services, Inc.	Family Support Services – Comprehensive Community Support Services – PATH Federal and PATH State Match; Transitional & Community Integration – Forensic Services – Justice Related Services.	\$372,181.00
500 Office Center Drive Fort Washington, PA 19034		

3/5/2020

Gregorio Consulting
10446 Claiborne Road
Claiborne, MD 21624

Trauma Informed System of Care
Initiative Consultant.

\$24,890.00

(RFP 18-02)

Contract Office of Managed Care Solutions 2020 HealthChoices: 112-9930-655160	Services Provided	Contract Amount
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Mental Health Partnerships
1211 Chestnut St
Philadelphia, PA 19107

The Family Empowerment Satisfaction Team (FEST) is a program that serves as independent evaluators of the behavioral health services provided to children and adolescents by Montgomery County by surveying parents and caregivers and the youth receiving services about accessibility, appropriateness and effectiveness of services, and overall satisfaction with services. FEST reports the findings, with recommendations, to Montgomery County Managed Care Services and works together with all stakeholders to help strengthen a resilience and recovery orientation to Montgomery County's delivery of managed care services and supports provided to families and youth.

\$291,892.00

Contract Amendment Office of Managed Care Solutions 2019 HealthChoices: 112-9930-655160	Services Provided	Amendment Amount
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The Council of Southeastern Pennsylvania, Inc.
4459 W Swamp Rd
Doylestown, PA 18902

Consumer satisfaction surveys and reports for Montgomery County residents receiving treatment services. Amendment is for administrative services mandated by HealthChoices that were not included in original contract agreement

\$ 10,217.82

Revised contract value:
\$78,336.82

3/5/2020

Case# 2020-04978-0 Docketed at Montgomery County Prothonotary on 03/23/2020 1:25 PM. Fee = \$290.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Office of Children and Youth

CONTRACT RENEWAL:

2019/2020

Provider Name

Rate

The Impact Project, Inc.

Specialized Foster Care I	231100 FA	\$66.39/Day per Child
Specialized Foster Care II	231100 FB	\$83.78/Day per Child
Specialized Foster Care III	231100 FC	\$87.37/Day per Child
Foster Care SIL 4 (Project LIFE)	231100 FD	\$95.42/Day per Child
Foster Care (Project LIFE) Mother and Baby	231100 FE	\$120.04/Day per Mother and Baby
SAL Level I	231100 FI	\$64.46/Day per Child
• Rental Assistance I		\$16.40/Day per approved Child
• Rental Assistance II		\$24.95/Day per approved Child
Foster Care Group 1 – SOS Level I	231100 FF	\$135.86/Day per Child
Foster Care Group 2 – SOS Level II	231100 FG	\$129.67/Day per Child
Critical Care Foster Care	231100 FJ	\$99.65/Day per Child

EXHIBIT 9

NEW HIRES					
NAME	DEPARTMENT	JOB TITLE	SALARY	TRANSACTION	DATE
BLACKLETTER, Rebecca	Assets & Infrastructure	Environmental Educ.	\$30,488.63	Full Time (\$16.75)	03/09/20
SHAFFER, Kevin	Assets & Infrastructure	Plumber/Fitter II	\$42,378.00	Full Time (\$24.15)	03/23/20
SWEENY, Dena	Children & Youth	Caseworker	\$45,912.13	Full Time (\$23.54)	03/09/20
VINHAR, Ashley	Clerk of Courts	Accounting Tech III	\$30,779.00	Full Time (\$17.54)	03/09/20
FISHPAW, Janel	Conservation District	Res. Conservationist	\$45,962.75	Full Time (\$23.57)	03/09/20
BUCSOK, Brittany	District Attorney	O.S.P. V	\$27,702.00	Full Time (\$15.78)	03/09/20
KOHL, Rebecca	Managed Care Solutions	Data Analyst Mgr	\$70,829.95	Full Time	03/09/20
MURPHY, Patricia	Mental Health	MIS Analyst	\$57,571.55	Full Time (\$29.52)	03/09/20
WONG, Catherine	Public Defender	Attorney I	\$58,723.43	Full Time	03/09/20
BASRA, Adi	Security	Security Officer	\$12.81	Part Time	03/09/20
BRIDGES, Lavin	Security	Security Officer	\$27,500.69	Full Time (\$13.22)	03/09/20
ROYSTER, Troy	Security	Security Officer	\$26,941.32	Rehire Full Time (\$12.95)	03/09/20
BUTLER, Austin	Sheriff	Deputy Sheriff	\$39,000.00	Full Time (\$20.00)	03/07/20
FASSNACHT, Michael	Sheriff	Deputy Sheriff	\$39,000.00	Full Time (\$20.00)	03/07/20

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OFF ROLL

NAME	DEPARTMENT	JOB TITLE	SALARY	TRANSACTION	DATE
LEONARD, Samantha	Adult Probation	Adult Probation Officer	\$42,848.08	Resignation	03/06/20
NIELSON, Brianna	Clerk of Courts	O.S.P. V	\$28,602.32	Resignation	02/14/20
MCCLEARY, Madelyn	Courts	Law Clerk	\$43,004.99	Resignation	08/28/20
TROUTMAN, Jennifer	Day Care	Resource/Referral Spec.	\$38,026.26	Resignation	03/06/20
WITHERITE, Kayla	District Attorney	O.S.P. V	\$30,129.38	Resignation	03/06/20
BLOSKY, Maggie	District Justice	District Court Clerk	\$29,701.94	Resignation	02/27/20
GALLAGHER, Kelly	District Justice	District Court Clerk	\$29,702.18	Resignation	02/21/20
BEER, Dean	Public Defender	Chief	\$123,334.74	Termination	02/26/20
HUDSON, Keisha	Public Defender	Chief Deputy	\$111,050.54	Termination	02/26/20
LUCAS, Julia	Public Defender	Attorney II	\$61,276.81	Resignation	03/06/20
BROWN, Christopher	Public Safety	Sr. Telecommunicator	\$48,571.63	Resignation	02/20/20
WELSH, Neal	Public Safety	Sr. Telecommunicator	\$55,246.59	Retirement (27 years)	02/21/20
KAMENS, Gene	Security	Security Officer	\$36,962.17	Retirement (17 years)	03/27/20
SANDERS, Garnell	Security	Security Officer	\$27,915.75	Termination	02/12/20

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O T H E R

NAME	DEPARTMENT	JOB TITLE	SALARY	TRANSACTION	DATE
SABOL, Candace	Adult Probation	O.S.P. V	\$31,870.00	Promotion (\$30,295.98)	03/09/20
HENRY, Ashley	Assets & Infrastructure	Custodian	\$27,317.33	PT to FT (\$16.34)	03/09/20
BALKIEWICZ, Victoria	Community Connections	Caseworker	\$42,559.06	Upgrade (\$41,724.57)	03/09/20
LEWIS, Darrell	Community Connections	Caseworker	\$54,763.08	Upgrade (\$53,689.29)	03/09/20
BENDER, Katelynn	Community Connections	Caseworker	\$44,385.37	Upgrade (\$43,515.07)	03/09/20
RINES, Theresa	Community Connections	Caseworker	\$48,830.79	Upgrade (\$47,873.32)	03/09/20
WIDNEY, Annette	Community Connections	Caseworker	\$48,830.79	Upgrade (\$47,873.32)	03/09/20
BULLARD, Raushanah	Courts	Judicial Assistant	\$53,418.00	PT to FT (\$31.26)	03/23/20
LYONS, Mary	Courts	Court Clerk	\$44,032.59	Salary Change (\$43,254.40)	03/09/20
MURRAY, Timothy	Courts	Court Clerk	\$44,032.59	Salary Change (\$43,254.40)	03/09/20
PIO, Matthew	Courts	Court Clerk	\$44,032.59	Salary Change (\$43,254.40)	03/09/20
SPOTTS, Serena	Courts	Court Reporter	\$56,089.00	PT to FT (\$35.21)	04/06/20
LOEFFEL, Danielle	District Justice	Sr. District Court Clerk	\$41,057.10	Promotion (\$37,324.64)	03/09/20
PANNING, Janet	Health	Interim Deputy Admin.	\$63,100.00	Salary Change (\$54,072.71)	03/09/20
NESTER, Gregory	Public Defender	Interim Co-Chief PD	\$104,416.00	Salary Change (\$84,611.98)	02/27/20
SWEENEY, Carol	Public Defender	Interim Co-Chief PD	\$104,416.00	Salary Change (\$83,241.90)	02/27/20
CORCORAN, John	Public Safety	Fire Svs Outrch Coord.	\$62,434.00	Transfer-Comm. (\$102,663.83)	03/09/20

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