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RUDOLPH CLARKE, LLC
Lauren A. Gallagher, Esquire
Attorney ID No. 206113
Michael L. Barbiero, Esquire
Attorney ID No. 82933
Gregory R. Heleniak, Esquire
Attorney ID No. 314427
Derek A. Keightly, Esquire
Attorney ID No. 325899
Seven Neshaminy Interplex, Suite 200
Trevose, PA 19053
Tel: (215) 633-1890; Fax: (215) 633-1830
lgallagher@rudolphclarke.com
mbarbiero@rudolphclarke.com
gheleniak@rudolphclarke.com
dkeightly@rudolphclarke.com

Attorneys for Respondent
Clerk of Courts Lori Schreiber

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, *et al.*	:	
	:	
Petitioners,	:	No. 4 MD 2021
v.	:	Class Action
	:	Original Jurisdiction
38TH JUDICIAL DISTRICT, *et al.*	:	
	:	
Respondents.	:	

RESPONDENT CLERK OF COURTS LORI SCHREIBER'S COMBINED ANSWER TO PETITIONERS' APPLICATION FOR SUMMARY RELIEF AND CLERK OF COURTS' CROSS-APPLICATION FOR SUMMARY RELIEF

Respondent Clerk of Courts Lori Schreiber hereby submits the instant Answer to Petitioners' Application for Summary Relief, and also submits the instant Cross-Application for Summary Relief requesting judgment in its favor and

dismissal of all Petitioners' claims brought against Respondent Clerk of Courts. In support of the instant Answer and Cross-Application per Pa.R.A.P. 1532(b), Respondent Clerk of Courts submits the following:

1. Petitioners commenced this action on or about January 5, 2021, asserting *inter alia* that in the 38th Judicial District, statutory costs assessed upon a conviction of a criminal defendant are sometimes imposed more than once per case, and that in such instances, multiple sets of costs are not permitted.

2. President Judge Carluccio and Court Administrator Kehs (collectively "Judicial Respondents") were sued in their official capacities only, and as such, the claims against them are brought against the 38th Judicial District.

3. In general, Petitioners assert that assessing costs on more than one count of a criminal information is *ultra vires* and violates a criminal defendant's right to equal protection.

4. Petitioners also assert generally that all Respondents' means of assessing court costs violates a criminal defendants' due process rights.

5. In the 38th Judicial District, when a defendant has been convicted of more than one offense, the sentencing judge may order that the defendant pay costs on more than one offense or count in the case. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶6.

6. If costs are ordered on more than one count, the sentencing judge will orally announce this during the sentencing hearing. Id. at ¶9.

7. When the sentencing judge announces this sentence, the terms of the sentence will be recorded on a Sentencing Sheet by a Court Clerk, who is present in the courtroom but is not an employee of the Clerk of Courts. Id. at ¶11.

8. These Court Clerks will record on the sentencing sheet the counts on which the presiding judge ordered the criminal defendants to pay costs. Id. at ¶13.

9. Then, the sentencing sheet is delivered to a Criminal Court Assistant, which is an employee of the 38th Judicial District, and this Criminal Court Assistant will update the Common Pleas Case Management System (CPCMS) case file by indicating "defendant to pay costs" on each count for which the judge ordered costs. Id. at ¶18-19.

10. The Criminal Court Assistant will not indicate in CPCMS that a defendant is to pay costs on a particular count unless ordered by the sentencing judge. Id. at ¶20.

11. After this, the sentencing sheet and CPCMS case file are sent to Respondent Clerk of Courts' office. Id. at ¶21.

12. Once the disposition sheet is received, the Clerk of Courts' manner of assessing costs is based on guidance from the 38th Judicial District Leadership. Specifically, the Clerk of Courts was told in approximately 2015 by then Judicial

District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all offense-related costs on those counts. Id. ¶23.

13.The Pennsylvania Supreme Court has held, "The powers granted to the clerk of courts by 42 Pa.C.S. § 2757 are clearly ministerial in nature. Nothing in this grant of authority suggests the power to interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law. Thus, the clerk of courts, as a purely ministerial office, has no discretion to interpret rules and statutes. As such, it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law. In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 9 (Pa. 2007).

14.Given this precedential case law, along with the guidance of the 38th Judicial District's Leadership, the Clerk of Courts clearly has no discretion to either interpret the statutes enabling imposition of costs or to question the means of assessing costs as directed by the Judicial Leadership.

15.Because of this, Petitioners' claims regarding the allegedly *ultra vires* nature of multiple sets of costs must fail as brought against Respondent Clerk of Courts. Assuming *arguendo* that there is any validity to Petitioners' claims, the above-noted case law makes clear that the Clerk of Courts is powerless to do anything to

change such assessment of costs unless and until it is ordered otherwise by the Judicial Leadership. Respondent Clerk of Courts is thus entitled to Summary Relief in the form of dismissal of Petitioners' claims.

16.All Disposition Clerks in the Clerk of Courts' office have been trained to read disposition sheets in the same manner and to apply costs in the same manner. In addition, the Clerk of Courts' office employs "verifiers" who check the information entered into CPCMS to ensure that the disposition clerk has assessed costs in compliance with the direction of the disposition sheet. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶28.

17.Petitioners have also admitted that "[a]ll relevant Clerk of Courts employees have been trained to interpret sentencing orders and assess the costs in a uniform way." Petitioners' Brief in Support of Application for Summary Relief, p. 7.

18.The Supreme Court of Pennsylvania has recognized that "[t]he essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly." Curtis v. Kline, 666 A.2d 265, 267 (Pa. 1995).

19.The facts of record establish that the Clerk of Courts has assessed costs uniformly upon all similarly-situated criminal defendants, and therefore Respondent Clerk of Courts is entitled to judgment in its favor as it pertains to Petitioners' Equal Protection Claims.

20.The Clerk of Courts will provide an itemized bill of costs to a criminal defendant upon request, and itemized costs can be viewed on online dockets. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶28.

21.As will be explored in more detail in the accompanying brief, Pennsylvania case law has established that criminal defendants are not entitled to an itemized bill of costs at or before sentencing.

22.As will also be explored in more detail in the accompanying brief, Pennsylvania case law has established that criminal defendants may challenge the amount of costs assessed upon them at any time.

23.Accordingly, Petitioners' Due Process claims must fail, and Respondent Clerk of Courts is entitled to judgment in its favor as it pertains to Petitioners' Due Process claims.

24.Overall, for the reasons laid out in more detail in the accompanying brief, this Honorable Court should deny Petitioners' Application for Summary Relief in its entirety, and should instead grant Respondent Clerk of Courts' Cross-Application for Summary Relief in its entirety and dismiss all of Petitioners' claims against Respondent Clerk of Courts.

WHEREFORE, Respondent Clerk of Courts respectfully requests this Honorable Court enter judgment in its favor as to all counts of the Petition for Review.

Respectfully submitted,

/s/Derek A. Keightly, Esq.
RUDOLPH CLARKE, LLC
Lauren A. Gallagher, Esquire
Michael L. Barbiero, Esquire
Gregory R. Heleniak, Esquire
Derek A. Keightly. Esquire
Attorneys for Respondent
Clerk of Courts Lori Schreiber

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ORDER

AND NOW, this _____ day of _____, 2024, upon consideration of Petitioners Application for Summary Relief, And Respondent Clerk of Courts' Combined Answer to Petitioners' Application for Summary Relief and Cross-Application for Summary Relief, it is **ORDERED** that Petitioners' Application for Summary Relief is **DENIED** in its entirety.

It is further **ORDERED** that Respondent Clerk of Courts' Cross-Application for Summary Relief is **GRANTED** in its entirety. Judgment is hereby entered in Respondent Clerk of Courts' favor as to all counts of the Petition for Review, and Petitioner's claims as brought against Respondent Clerk of Courts are hereby **DISMISSED**.

_____

J.

RUDOLPH CLARKE, LLC
Lauren A. Gallagher, Esquire
Attorney ID No. 206113
Michael L. Barbiero, Esquire
Attorney ID No. 82933
Gregory R. Heleniak, Esquire
Attorney ID No. 314427
Derek A. Keightly, Esquire
Attorney ID No. 325899
Seven Neshaminy Interplex, Suite 200
Trevose, PA 19053
Tel: (215) 633-1890; Fax: (215) 633-1830
lgallagher@rudolphclarke.com
mbarbiero@rudolphclarke.com
gheleniak@rudolphclarke.com
dkeightly@rudolphclarke.com

Attorneys for Respondent
Clerk of Courts Lori Schreiber

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RESPONDENT CLERK OF COURTS LORI SCHREIBER'S BRIEF IN SUPPORT OF COMBINED ANSWER TO PETITIONERS' APPLICATION FOR SUMMARY RELIEF AND CLERK OF COURTS' CROSS-APPLICATION FOR SUMMARY RELIEF

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I. INTRODUCTION

Through the instant filing, Respondent Clerk of Courts both answers Petitioners' Application for Summary Relief and submits its own Cross-Application for Summary Relief.

As will be explored below, the Clerk of Courts is a solely ministerial office which has no power to interpret statutes. Indeed, the Pennsylvania Supreme Court has held:

> The powers granted to the clerk of courts by 42 Pa.C.S. § 2757 are clearly ministerial in nature. Nothing in this grant of authority suggests the power to interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law. Thus, the clerk of courts, as a purely ministerial office, has no discretion to interpret rules and statutes. As such, it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law.

In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 9 (Pa. 2007).

This makes clear that the Clerk of Courts is not permitted to interpret statutes, and so it has no authority to review the statutes which enable assessment of costs to determine whether an order requiring assessment of multiple sets of costs is lawful or not. It has also been stipulated by all parties to this action that the Clerk of Courts' manner of assessing costs is based on the guidance of the 38th Judicial District's Leadership. Accordingly, to the extent there is any validity to Petitioners' claims that certain costs have been imposed *ultra vires*, the Clerk of

Courts is powerless to disregard the mandates of any particular sentencing order, as doing do would require it to defy the Judicial District's Leadership in clear contravention of the above-noted Pennsylvania Supreme Court precedent. For these reasons, regardless of the merit of Petitioners' cost-duplication claims, such claims must fail as brought against Respondent Clerk of Courts, and Respondent Clerk of Courts is entitled to judgment in its favor.

As it pertains to Petitioners' Equal Protection claims, there has been no evidence submitted whatsoever to suggest that the Clerk of Courts has ever treated any individual criminal defendant differently than another similarly-situated criminal defendant. On the contrary, Petitioners admit that the Clerk of Courts assesses costs in a uniform manner. Accordingly, Petitioners' Equal Protection claims as brought against Respondent Clerk of Courts must fail, and Respondent Clerk of Courts is entitled to judgment in its favor as a matter of law.

Petitioners' Due Process Claims must fail as well. The facts of record establish that criminal defendants receive adequate notice when costs are assessed against them, despite there being no requirement that a criminal defendant receive an itemized bill of costs at or before sentencing. Further, Pennsylvania Courts have established that a criminal defendant may challenge the amount of costs assessed against them at essentially any time. For these reasons, Respondent Clerk of Courts is entitled to judgment in its favor on Petitioners' Due Process claims as well.

For all of these reasons, Respondent Clerk of Courts is entitled to summary relief in the form of dismissal of each of Petitioners'' claims.

II. COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Is Respondent Clerk of Courts entitled to a declaration as a clear matter of law that it bears no liability for its assessment of any costs which may have been imposed *ultra vires*?

Suggested Answer: Yes.

2. Does Respondent Clerk of Courts have a rational basis for uniformly assessing costs in compliance with sentencing orders and the instruction of the 38th Judicial District's Leadership?

Suggested Answer: Yes.

3. Does Respondents' means of assessing costs in the 38th Judicial District comply with procedural due process requirements?

Suggested Answer: Yes.

III. STATEMENT OF UNCONTESTED FACTS

To the extent Petitioners are attempting to reinterpret or rephrase facts to which all parties stipulated in an attempt to shoehorn their legal arguments, an issue of material fact has been raised and needs to be resolved prior to any dispositive motions.

However, in support of its own Cross-Application for Summary Relief, Respondent Clerk of Courts offers the following statement of uncontested facts, which is based solely on facts to which the parties have stipulated via the Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, a copy of which is attached hereto as Exhibit "A":

In the instant matter, the means by which costs are imposed is not in dispute. In the 38th Judicial District, when a defendant has been convicted of more than one offense, the sentencing judge may order that the defendant pay costs on more than one offense or count in the case. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶6. If costs are ordered on more than one count, the sentencing judge will orally announce this during the sentencing hearing. Id. at ¶9. When the sentencing judge announces this sentence, the terms of the sentence will be recorded on a Sentencing Sheet by a Court Clerk, who is present in the courtroom but is not an employee of the Clerk of Courts. Id. at ¶11. These Court Clerks will record on the sentencing sheet the counts on which the presiding judge ordered the criminal defendants to pay costs. Id. at ¶13. Then, the sentencing sheet is delivered to a Criminal Court Assistant, which is an employee of the 38th Judicial District, and this Criminal Court Assistant will update the Common Pleas Case Management System (CPCMS) case file by indicating "defendant to pay costs" on each count for which the judge ordered costs. Id. at

¶18-19. The Criminal Court Assistant will not indicate in CPCMS that a defendant is to pay costs on a particular count unless ordered by the sentencing judge. Id. at ¶20. After this, the sentencing sheet and CPCMS case file are sent to Respondent Clerk of Courts' office. Id. at ¶21.

Once the disposition sheet is received, the Clerk of Courts' manner of assessing costs is based on guidance from the 38th Judicial District Leadership. Specifically, the Clerk of Courts was told in approximately 2015 by then Judicial District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all offense-related costs on those counts. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶23.

IV. STANDARD OF REVIEW

"In ruling on an application for summary relief, the court must view the evidence of record in the light most favorable to the nonmoving party and enter judgment only if there are no genuine issues as to any material facts and the right to judgment is clear as a matter of law." Buehl v. Horn, 761 A.2d 1247, 1248–49 (Pa.Cmwlth. 2000), aff'd, 568 Pa. 409, 797 A.2d 897 (Pa. 2002).

V. ARGUMENT

a. Respondent Clerk of Courts is entitled to a declaration that it bears no responsibility for any costs which may have been imposed *ultra vires* because it is forced to assess costs in

compliance with sentencing orders issued by the 38th Judicial District.

Respondent Clerk of Courts maintains, as it has throughout the course of this action, that it has no discretion to deviate from the orders of sentencing judges and the directives of the Leadership of the 38th Judicial District. The Pennsylvania Supreme Court has established that "the clerk of courts, as a purely ministerial office, has no discretion to interpret rules and statutes. As such, it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law." In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 9 (2007).

As was outlined above in the statement of uncontested facts, the means by which costs are imposed and assessed in the 38th Judicial District is not in dispute. Most germane to the instant Answer and Cross-Application for Summary Relief, the Clerk of Courts' manner of assessing costs is based on guidance from the 38th Judicial District Leadership:

> The Clerk of Courts was told in approximately 2015 by then Judicial District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all offense-related costs on those counts.

Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶23.

This instruction from the Judicial Leadership appears to be based on a distinction drawn by CPCMS[1]; however, regardless of the reason for this instruction, the above-noted Pennsylvania Supreme Court case law makes clear that it is not the Clerk of Courts' province to review and interpret statutes. Nor does the Clerk of Courts possess the authority to challenge the Judicial Leadership's instruction to assess costs in a certain way. Accordingly, Respondent Clerk of Courts submits that, assuming *arguendo* that any costs were imposed *ultra vires*, the Clerk of Courts was only following orders in assessing such costs, and had no authority whatsoever to defy a sentencing order or the instruction of the 38th Judicial District's Leadership.

1. **Any involvement Respondent Clerk of Courts has had in assessing allegedly *ultra vires* costs was ministerial and required by law, and Respondent Clerk of Courts possesses no discretion to defy individual sentencing orders or the instruction of the 38th Judicial District's Leadership.**

Any claim that it is the Clerk of Courts' duty to interpret and apply any statutes enabling assessment of Court Costs runs contrary to state statute and to Pennsylvania Supreme Court precedent. Indeed, Petitioners have claimed that "sentencing judges rely on the Clerk of Courts to ensure that only legal costs are

[1] "The phrase 'offense-related costs' refers to a category of assessments in CPCMS. CPCMS has different screens for the imposition of 'Offense-Related Assessments' and 'Non-Offense-Related Assessments.' These labels appear only in the CPCMS computer system and the user manual for that system." Petitioners' Brief in Support of Application for Summary Relief at p. 7.

assessed after sentencing." Petitioners' Brief in Support of Application for Summary Relief, p.14. However, such a proposition, if submitted by Petitioners, any judge of the 38th Judicial District, or anyone else, imposes an interpretive duty upon the Clerk of Courts which the Pennsylvania Supreme Court has clearly rejected:

> The powers granted to the clerk of courts by 42 Pa.C.S. § 2757 are clearly ministerial in nature. **Nothing in this grant of authority suggests the power to interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law**. Thus, the clerk of courts, as a purely ministerial office, **has no discretion to interpret rules and statutes**. As such, it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law.

In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 9 (2007)

Accordingly, if sentencing judges rely on the Clerk of Courts to independently interpret their sentencing orders and make a determination about whether certain costs are legal and others are *ultra vires*, such reliance is unjustified and contravenes both state statute and Pennsylvania Supreme Court precedent. In fact, such a proposition also contravenes the facts upon which all parties have stipulated: The Clerk of Courts was told in approximately 2015 by then Judicial District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered

the imposition of all offense-related costs on those counts. Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶22.

Petitioners have also acknowledged in their Brief that the Clerk of Courts' actions in assessing costs are based on direction from CPCMS and the 38th Judicial District's leadership:

> [I]f a sentencing order directs imposition of "costs" on multiple counts in a case, then the Clerk of Courts will impose all "offense-related" costs on the defendant for each of those counts. The phrase "offense-related costs" refers to a category of assessments in CPCMS. CPCMS has different screens for the imposition of "Offense-Related Assessments" and "Non-Offense-Related Assessments." These labels appear only on the CPCMS computer system and the user manual for that system; no statute, court rule, or court opinion uses these terms or draws such a distinction between these costs. That policy was adopted by the Clerk of Courts Office **at the instruction of the 38th Judicial District's Leadership** in 2015 and has been in place since then.

Petitioners' Brief in Support of Application for Summary Relief at p. 7 (internal citations omitted)(emphasis added).

Again, the Pennsylvania Supreme Court has held that the Clerk of Courts does not have "the power to interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law" and "the clerk of courts, as a purely ministerial office, has no discretion to interpret rules and statutes." In re Admin. Order No. 1-MD-2003 at 9.

Petitioners' admission that any Clerk of Courts policy pertaining to assessment of costs was done at the instruction of the 38th Judicial District

Leadership should make clear that the Clerk of Courts has had no discretion in imposing any allegedly *ultra vires* costs[2]. To suggest that the Clerk of Courts has had any choice in imposing any allegedly *ultra vires* costs, or to suggest the Clerk of Courts has the responsibility to review and interpret statutes to determine the legality of a sentencing order requiring assessment of duplicate costs, or to suggest that the Clerk of Courts should have ignored the Judicial District's Leadership's instructions, clearly contravenes Pennsylvania Supreme Court precedent. Indeed, the Clerk of Courts has consistently maintained that it will comply with whatever directive or Order that is issued by Judicial District's Leadership regarding this issue.

Respondent Clerk of Courts is also compelled to address Petitioners' claims that "Respondents will not impose costs on those that have been 'nolle prossed,' even if the sentencing order calls for the defendant to pay costs on the nolle prossed counts." Petitioners' Brief in Support of Application for Summary Relief, p. 31. In so claiming, Petitioners appear to suggest that the Clerk of Courts maintains some independent discretion to "apply sentencing orders in a lawful way." Id. However, as Petitioners have stipulated, the Clerk of Courts' policy of not applying costs to *nolle prossed* counts was again done at the direction of the

[2] Respondent Clerk of Courts does not concede in any way that any costs have been imposed ultra vires. As has been established via In re Admin. Order No. 1-MD-2003, it is not the Clerk of Courts' role to interpret statutes.

38th Judicial District's Leadership. Indeed, "**[p]ursuant to the criminal division judges' directions**, the Disposition Clerk or other relevant employee of the Clerk of Court's office will not assess any costs associated with a count that has been *nolle prossed*, even if the Disposition Sheet records that the presiding Judge ordered the criminal defendant to pay costs on the *nolle prossed* count." Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶ 27 (emphasis added).

In summary, it is apparent that Petitioners are now seeking to shift the responsibility, at least in part, for the imposition of allegedly *ultra vires* costs from the sentencing judges, who actually impose costs on multiple counts, to the ministerial clerk of courts, which only enters those orders into the CPCMS system. The 38th Judicial District Leadership, which is comprised of sentencing judges, instructed the Clerk of Courts to assess costs in a certain when way processing sentencing sheets. The Clerk of Courts has consistently followed that directive, as it is required to do. Now, Petitioners apparently expect the Clerk of Courts to ignore state statute, Pennsylvania Supreme Court precedent, and the instruction of the Judicial District Leadership, in order to independently interpret the statutes authorizing imposition of costs in the manner Petitioners believe is appropriate.

It is clear that if there is any validity to Petitioners' claims that certain duplicate costs are being assessed *ultra vires*, the responsibility for such an issue

falls with parties other than the Clerk of Courts. Again, all parties have stipulated that the Clerk of Courts' means of assessing costs is based on the instruction of the 38th Judicial District. If the Judicial District's Leadership issues alternative instructions, either due to Order of this Honorable Court or otherwise, the Clerk of Courts will comply with such instructions. This is, once again, because "the clerk of courts, as a purely ministerial office, has no discretion to interpret rules and statutes," and therefore possesses no discretion whatsoever to determine whether a particular cost should, or should not be, imposed. In re Admin. Order No. 1-MD-2003 at 9. Further, even if the Clerk of Courts were permitted to independently interpret statutes, it would be powerless to change its practices forced upon it by the 38th Judicial District's Leadership, as the Clerk of Courts does not possess "the power to interpret statutes and to **challenge actions of the court that the clerk perceives to be in opposition to a certain law**." Id. (emphasis added).

For these reasons, the Clerk of Courts is entitled to judgment as a matter of law that Petitioners' ultra vires claims should be dismissed as brought against Respondent Clerk of Courts.

2. Petitioners have failed to sustain their burden of proof and are unable to establish a clear right to relief as a matter of law as it pertains to their claims that the imposition of multiple sets of costs on a single criminal docket is always *ultra vires*.

Notwithstanding the above arguments in support of its Cross-Application for Summary Relief, Respondent Clerk of Courts submits that even if this Honorable Court does not rule in its favor based on the above arguments, Petitioners' ultra vires claims still must fail as a matter of law.

Indeed, the Court has previously certified the following Class:

> All individuals who have appeared or will appear as defendants in criminal cases in the 38th Judicial District and against whom any duplicated costs have been or will be imposed in one criminal case when the charges arise out of the same occurrence, **or in which the charges have been included in one complaint, information, or indictment by the use of different counts.**

Essentially, the Class includes criminal defendants who have been assessed certain costs more than once on a particular criminal information, regardless of whether separate criminal incidents were consolidated onto one criminal docket. In their Application for Summary Relief, Petitioners argue that they are entitled to summary relief because there are no circumstances in which duplicated costs are permissible. Petitioners' argument is inconsistent with applicable case law and relies upon factual assumptions.

This Honorable Court has previously examined a similar issue in Sherwood v. Pennsylvania Dep't of Corr., 268 A.3d 528 (Pa. Commw. Ct. 2021). In Sherwood, the Appellant argued that $200 in costs imposed under the Substance Abuse Education Act was improper because he was charged for Substance Abuse

Education Acts costs twice on a particular docket. Notably, in that case the Appellant had previously pled guilty to the offenses of possession with intent to deliver *and* possession of a controlled substance, both of which are violations of the State's Drug Act. Under State law, 18 Pa.C.S.A. § 7508.1(b) had required the imposition of a mandatory cost of $100 to be assessed for a violation of the Drug Act. In examining the Appellant's claim that he was improperly assessed this cost twice, this Court held:

> [I]n reviewing Section 7508.1(b), ***it is not clear whether the cost is intended to be assessed per violation of the Drug Act charged or per criminal incident***. Further, ***it is not clear from the record whether the two violations of the Drug Act to which Sherwood pled guilty arose out of a single criminal incident or separate criminal incidents***. Given the lack of clarity in the statutory language and the record, **neither Sherwood nor Respondents have established that it is clear as a matter of law that charging Sherwood this cost twice at Docket 126 was either authorized or prohibited** by Section 7508.1(b).

Sherwood at 554 (emphasis added).

Such lack of clarity exists as it pertains to Petitioners' *ultra vires* claims in the instant matter as well. Specifically, this Honorable Court has recognized that the statutory language does not clearly delineate whether this Substance Abuse Education Act cost is to be imposed once per violation, or once per criminal incident. This lack of clarity, in itself, prevents Petitioners from obtaining the declaratory relief they seek because, in viewing the evidence in the light most

favorable to Respondents, there is no clear right to relief as a matter of law[3], as is required under the applicable standard of review.

Further, the Court in Sherwood indicated that multiple offenses being listed on a single docket does not prove that *only* one criminal incident occurred. While Petitioners generally claim that multiple sets of costs on the same docket is *never* permitted, this language from Sherwood suggests that multiple criminal incidents can be consolidated onto one criminal docket. Sherwood further suggests that in such an instance, imposition of multiple sets of costs is, at best, permitted, or at worst, the legality of such assessments is unclear. In either scenario, there is no clear precedent to support Petitioners' assertions, and therefore Petitioners have no clear right to relief as a matter of law.

Of particular note, the first named Petitioner, Amy McFalls, was charged for separate and distinct criminal conduct on one criminal docket. In reviewing Exhibit "C" to Petitioners' Petition for Review, it is apparent that Ms. McFalls was charged with offenses arising from multiple criminal incidents, as indicated from the fact that Counts 1 (Driving Under the Influence) & 2 (Accidental Damage to

[3] Petitioners claim on page 2 of their Brief in Support of Application for Summary Relief that the Court in Sherwood "stayed proceedings in that case pending this Court's resolution of the legality of duplicating these costs." However, no such stay in proceedings is evident from a review of Sherwood. Instead, the Court simply expressed a lack of clarity on the issue, and recognized that the issue was currently before the Court via the instant matter.

Unattended Vehicle), were adjudicated via bench trial on July 1, 2019, whereas Counts 3 (Aggravated Harassment by Prisoner) & 7 (Institutional Vandalism) were adjudicated by jury trial on September 16 and 17, 2019. All charges were present under the same docket number of CP-46-CR-2346-2018, which is consistent with the fact that separate criminal incidents can be charged under the same docket number.

As it pertains to Ms. McFalls, the imposition of multiple sets of costs is logical, given that there were two separate criminal incidents ultimately leading to two separate adjudicative proceedings, both of which would necessarily carry the expenditure of court resources. Therefore, "duplicate" costs may be imposed on the same criminal docket under certain circumstances, particularly in light of Sherwood. This may be the case under any number of Class Members' criminal dockets.

Petitioners assert that duplication of costs is never legal, even when separate criminal incidents are charged on one single docket, though they have provided no authority prohibiting the trial court from exercising discretion to impose such costs when charges arise from multiple criminal episodes. Respondent Clerk of Courts submits that no such authority exists, because trial courts have such discretion. At the very least, Petitioners have not established that there is a clear right to relief as a matter of law as it pertains to these costs. It is an oversimplification for

Petitioners to simply claim that multiple sets of costs are improper in every criminal case, and the holding in Sherwood directly disputes such a proposition.

The statutory language authorizing imposition of each cost is different, and as such, a determination of whether each cost may be duplicated under those individual circumstances is required. Even then, for costs that are arguably only permitted to be assessed once per criminal incident, the question must be examined in the context of whether the individual Petitioner or Class Member was convicted under a single or multiple criminal incidents. Petitioners' arguments regarding Act 17 of March 10, 1905, P.L. 35, do not change this, as Act 17 specifies that, in summary, costs should not be assessed "in and on more than one return" when there is a "severance or duplication of two or more offenses **which grew out of the same occurrence**, or which might legally have been included in one complaint an in one indictment by the use of different counts." 17 of March 10, 1905, P.L. 35 (emphasis added). As for the applicability of Act 17 generally, the Act simply does not establish a clear right to Petitioners' requested relief. Petitioners argue that a savings clause preserved the relevant provisions of the repealed Act 17, yet were unable to provide any case law subsequent the repeal act the Act which directly cites Act 17. Further, Act 17 deals directly with instances in which crimes arising out of a single occurrence were charged on *separate* dockets. This is not the case in

the instant matter, and as such, Act 17 cannot establish any clear right to legal relief.

In summary, at the very least, there is a significant lack of clarity and lack of clear precedent to support Petitioners' claims. In the instant proceeding, the Court must view the evidence in the light most favorable to the nonmoving party. When doing so, the Court should also find that Petitioners are not clearly entitled to judgment as a matter of law and deny the Application for Summary Relief accordingly.

b. Respondent Clerk of Courts' Uniform Assessment of Costs in Compliance with Sentencing Orders and the Instruction of the 38th Judicial District's Leadership Does Not Violate Petitioners' Right to Equal Protection of the Law

Petitioners are unable to establish a clear right to relief as a matter of law as it pertains to their Equal Protection Claims as brought against Respondent Clerk of Courts. In fact, Respondent Clerk of Courts is entitled to judgment in its favor as it pertains to Petitioners' Equal Protection Claims, as the undisputed facts establish a clear right to relief as a matter of law that Respondent Clerk of Courts' practices do not violate Petitioners' and Class Members rights to Equal Protection.

Initially, Petitioners claim that Respondents have violated their right to equal protection of the laws "by **arbitrarily** imposing some costs multiple times per

case, while imposing other costs only once." Petitioners' Brief in Support of Application for Summary Relief, p. 36. (emphasis added).

However, cutting against the claim that imposition of such costs is indeed arbitrary, Petitioners also claim that "[a]ll relevant Clerk of Courts employees have been trained to interpret sentencing orders and assess the costs in a **uniform** way." Petitioners' Brief in Support of Application for Summary Relief, p. 7. (emphasis added).

The Supreme Court of Pennsylvania has recognized that "[t]he essence of the constitutional principle of equal protection under the law is that like persons in like circumstances will be treated similarly." Curtis v. Kline, 666 A.2d 265, 267 (Pa. 1995). All similarly-situated individuals will be treated equally by Respondent Clerk of Courts in terms of the assessment of costs. This does not appear to be in dispute given Petitioners' admission that Clerk of Courts employees have been trained to interpret sentencing orders and assess the costs in a **uniform** way.[4]

As noted above, such training of Clerk of Courts employees is based on a directive from the 38th Judicial District's Leadership:

> The Clerk of Courts was told in approximately 2015 by then-Judicial District Leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing

[4] Petitioners also claim that "Respondents impose duplicated costs **in a consistent manner**." Declaration of Andrew Christy at ¶5.

> judge ordered the imposition of all offense-related costs on those counts.

Joint Stipulations of Fact and Law Submitted for the January 25, 2023 Class Certification Hearing, ¶23.

To the extent there is any validity to Petitioners' Equal Protection Claims as brought against any other Respondent (and Respondent Clerk of Courts does not concede there is any such validity), any "arbitrary" application of the statutes authorizing costs is Ordered and directed by parties other than the Clerk of Courts. Again, while Petitioners may claim that Respondent Clerk of Courts exercises discretion in "interpreting" sentencing orders, the above noted stipulation signed by all parties proves there is no such independent discretion, which is consistent with applicable law. The stipulated facts establish that Clerk of Courts employees receive a sentencing order and assess costs based on the number of counts on which costs were imposed by the sentencing judge. The manner of assessing specific costs is based on the instruction of the 38th Judicial District's Leadership. This instruction is the Clerk of Courts' rational basis for assessing costs.

As was noted above, the Pennsylvania Supreme Court has held, "it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law." In re Admin. Order No. 1-MD-2003, 936 A.2d 1, 9 (2007).

Again, as Petitioners admit, the Clerk of Courts' employees are trained to assess costs in a uniform way, and that training is based on instruction from parties the Clerk of Courts is not permitted to ignore. To suggest that the Clerk of Courts is responsible for checking any sentencing order or instruction of the 38th Judicial Leadership for its legality, and then to change its own practices accordingly, runs contrary to Pennsylvania Supreme Court precedent. Accordingly, assuming *arguendo* that there is any validity to Petitioners' Equal Protection claims, Respondent Clerk of Courts has been put in an impossible position of being ordered to assess costs which may or may not comply with the law, but is powerless to do anything to change its practices unless and until it receives an alternative order. Either way, it is not the Clerk of Courts' place to independently determine the legality of any given sentencing order, or of the Judicial District's Leadership's instructions, as it pertains to assessment of costs.

The Clerk of Courts' uniform application costs (in compliance with the guidance from the Judicial District's leadership), and its lack of authority to independently question and interpret sentencing orders, is evident from examples provided in Petitioners' Brief. Indeed, Petitioners use criminal docket CP-46-CR-0000649-2023 as an example of their view of how costs *should* be assessed. In using this example, Petitioners, in summary, argue that the defendant *could* have been assessed a Substance Abuse Education costs for a drug possession charge of

which the defendant was convicted, but which was not the lead count. Petitioners then note, "[b]ecause there was no court order to impose [costs] on anything other than the lead count, Respondents did not [assess] a Substance Abuse Education cost for the possession offense. Thus, the defendant did not pay the costs associated with the possession conviction, even though the defendant was convicted of drug possession." Petitioners' Brief in Support of Application for Summary Relief at p. 30.

In so arguing, Petitioners acknowledge that Respondent Clerk of Courts only assesses costs when required to do so by court order[5]. Regardless of the merit of Petitioners' argument regarding the Substance Abuse Education cost, the Clerk of Courts, "has no discretion to interpret rules and statutes," and even if Clerk of Courts employees believed that the Substance Abuse Education cost should have been imposed, in the absence of a sentencing order requiring assessment of costs on that subsequent count, they did not assess the costs because they lack the "power to interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law." In re Admin. Order No. 1-MD-2003 at 9.

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[5] Petitioners further acknowledge through the Declaration of Andrew Christy that the Clerk of Courts only assesses costs on a subsequent count when so ordered by the sentencing judge: "the judge did not order costs imposed on more than one count, nor did the judge waive costs. As a result, only one set of costs was imposed in each of these cases." Declaration of Andrew Christy at ¶12.

Overall, this example drives home the truth that Respondent Clerk of Courts treats all criminal defendants uniformly when it assesses costs as ordered by the sentencing judge. While Petitioners claim that "Respondents' choices about which costs they duplicate and which costs they assess only once has no basis in the statutes that authorize those costs," there is no **choice** available to Clerk of Courts employees. As has been demonstrated at length above, the Clerk of Courts has no authority to disregard the 38th Judicial District's Leadership's directive to assess all offense-related costs on a subsequent count when so ordered by the sentencing judge. The only **choice** the Clerk of Courts has is to follow the directive of the 38th Judicial District's Leadership. This requirement to follow their Judicial District's guidance, as contemplated in In re Admin. Order No. 1-MD-2003, is the Clerk of Courts' rational basis for assessing costs in all criminal cases. There has been no evidence presented to suggest that the Clerk of Courts arbitrarily assesses court costs in disregard of a sentencing order, because the Clerk of Courts does not disregard sentencing orders. On the contrary, all parties agree that when the Clerk of Courts receives a sentencing order, its employees will assess costs in the exact same, **uniform** way, regardless of the individual defendant who is the subject of the sentencing order.

Accordingly, Petitioners' Equal Protection Claims, as brought against Respondent Clerk of Courts, must fail as a matter of law. Indeed, Respondent Clerk of Courts is in fact entitled to judgment in its favor as a clear matter of law.

As it pertains to Petitioners' general Equal Protection arguments as brought against all Respondents, Respondent Clerk of Courts joins in the arguments advanced by the Judicial Respondents in their own Application for Summary Relief that Petitioners' equal protection claims are meritless because they are not based on the treatment of similarly-situated criminal defendants, but instead on purported similarly-situated statutes. For those reasons, as well as those advance above in the instant brief, Respondent Clerk of Courts is entitled to summary relief.

c. Respondents' Manner of Assessing Costs Does Not Violate Procedural Due Process Guarantees

Petitioners are unable to establish a clear right to relief as a matter of law as it pertains to their Procedural Due Process Claims, and so their Application for Summary Relief on these grounds should be denied. In fact, Respondent Clerk of Courts is entitled to judgment in its favor as it pertains to Petitioners' Due Process Claims, as the undisputed facts establish a clear right to relief as a matter of law that Respondent Clerk of Courts' practices do not violate Petitioners' and Class Members Due Process Rights.

Initially, Respondent Clerk of Courts disputes Petitioners' allegation that "[n]one of the Petitioners nor other Class members have ever received a statement from Respondents setting forth the costs assessed in their cases." (Petitioners' Brief in Support of Application for Summary Relief, p. 40). As Petitioners admit, criminal defendants are provided with an itemized bill of costs upon request. Accordingly, to assert that *none* of the Class Members has ever utilized this readily-available option is an assumption lacking factual support.

Nothing has been presented to suggest that to this day, any of the Petitioners or Class Members would be barred from obtaining an itemized bill of costs either through online dockets or via request to Respondent Clerk of Courts. On the contrary, each of the Petitioners and Class Members is a part of this action due to information Petitioners gathered from such itemized bills. Stated otherwise, Petitioners obtained notice of allegedly duplicated costs for their respective criminal dockets and challenged the imposition of such costs accordingly. In certain instances, these costs may remain outstanding and uncollected[6], and so no property interest has been taken from these individuals, regardless of the validity of Petitioners' claims that the costs are *ultra vires*.

[6] Petitioners have not submitted any evidence to suggest that any of the Petitioners' or Class Members' outstanding costs have been sent to collections or accrued any kind of late fees due to nonpayment.

Importantly, each Petitioner or Class Member maintains the ability to challenge any costs imposed upon them. The Pennsylvania Supreme Court has held that "[t]he imposition of costs in a criminal case is not part of the sentence, but rather is incident to the judgment . . . [t]he liability of a defendant for costs is not a part of the penalty imposed by the statutes which provide for the punishment of these offenses. Such liability is an incident of the judgment, arising out of our statutes providing for the payment of costs in criminal proceedings[.]" Commonwealth v. Lopez, 280 A.3d 887, 901 (Pa. 2022) (internal citations omitted).

This guidance shows that a particular criminal defendant is not limited to a particular statutory time frame[7] to challenge the legality of their criminal sentence, and so there is no statutory bar to a challenge of costs at any time[8]. Indeed, "[t]here can be more than one 'determination' of the ***amount*** and method of payment of costs." Id. at 93 (emphasis added).

Respondent Clerk of Courts recognizes this Honorable Court's prior holding that "[t]he central demands of due process are notice and an opportunity to be heard at a meaningful time and in a meaningful manner." McFalls v. 38th Judicial

[7] Pa.R.Crim.P. Rule 720 provides *inter alia* that a post-sentence motion may be filed within ten (10) days after imposition of the sentence,

[8] Respondent Clerk of Courts maintains that each named Petitioner and Class Member should have appealed any perceived ultra vires costs directly with their sentencing judge.

Dist., 4 M.D. 2021, 2021 WL 3700604, at *11 (Pa.Cmwlth. Aug. 6, 2021)(internal citations omitted).

Respondent Clerk of Courts submits that Lopez proves any criminal defendant may be heard at a meaningful time and in a meaningful manner as it relates to the amount of costs imposed upon them. Again, these costs are not restricted to a ten-day post-sentence time frame to challenge an illegal sentence, and so the defendant can challenge such costs with the court at any time. This is, in essence, a criminal defendant's opportunity to be heard if they believe certain costs were improperly assessed. This opportunity to be heard satisfies procedural due process requirements. As this Honorable Court has previously held in the context of a criminal defendant's challenge to the assessment of costs, when such costs are assessed, "the defendant still has the ability to challenge the amount." Richardson v. Pennsylvania Dep't of Corr., 991 A.2d 394, 397 (Pa.Cmwlth. 2010).

As it pertains to the "notice" requirement of procedural due process, the Pennsylvania Superior Court has examined a claim that an itemized bill of costs is required at the time of sentencing. In Commonwealth v. Black, the Court examined a set of facts very similar to those alleged by Petitioners:

> Black entered a negotiated guilty plea in May 2019 to one count of retail theft. The plea bargain included Black's agreement to pay costs, but the parties did not itemize the costs or set an amount. Black asked the court during the plea hearing to waive the costs on the ground that she was unable to pay, and the court denied the request. The court

> sentenced Black pursuant to the plea deal, imposing 12 months' probation and ordering her to pay restitution and costs. However, the sentencing order, like the plea agreement, did not specify the individual costs or set a total amount for her to pay. Black did not request a bill of the costs at that time or object to the imposition of costs on the basis that she had not yet received a bill of costs. Black then filed a post-sentence motion, on May 29, 2019, again asking the court to waive the costs, asserting she was unable to pay. She did not raise the absence of a bill of costs. The trial court denied the motion that same day. The following day, the Clerk of Court docketed an Itemized Account of Fines, Costs, Fees and Restitution. There is no notation on the docket or anything in the record suggesting that this Itemized Account was provided to Black.

Commonwealth v. Black, 258 A.3d 535 (Pa. Super. Ct. 2021).

Ultimately, the Superior Court held that the defendant waived the issue by failing to raise it with the trial court. However, the Court stated that the defendant "certainly knew during the plea and sentencing proceeding that she was going to be ordered to pay costs and that she had not received a bill of costs. Indeed, she entered into a plea agreement requiring her to pay costs without specifying the costs she would pay, and **she took no steps to obtain a bill of costs during plea negotiations or at sentencing**." Id. (emphasis added). Accordingly, the Court expressly recognized that a defendant has adequate opportunities to raise objections or ask questions relating to costs prior to, and at, sentencing.

While Petitioners suggest that "pre-deprivation notice," is required to satisfy due process requirements, Pennsylvania courts have rejected arguments that a criminal defendant is entitled to an itemized bill of costs at or before sentencing.

Recently, the Superior Court held that a sentence is not illegal where a sentencing order referenced costs but did not specifically itemize them. Commonwealth v. Abbott, 304 A.3d 719, 719 n.2 (Pa. Super. 2023).

Further, in Commonwealth v. Dipietro, a criminal defendant argued that the costs and fines imposed at sentencing were illegal because each cost was not specifically mentioned at sentencing or in the sentencing order. The defendant, who pled guilty, wanted the sentence vacated so he could "renegotiate a plea that is not ambiguous regarding fines and costs." Commonwealth v. Dipietro, 2016 WL 2910092, at *5 (Pa. Super. 2016). The Superior Court disagreed, holding, "Appellant cites no law indicating he is immune from payment of statutorily mandated court costs **simply because his plea bargain did not expressly delineate each line item**." Id. at *5 (emphasis added).

In support of the Superior Court's holding, state statute provides, "the court shall order the defendant to pay costs. In the event the court fails to issue an order for costs pursuant to section 9728, costs shall be imposed upon the defendant under this section. **No court order shall be necessary for the defendant to incur liability for costs under this section**." 42 Pa.C.S.A. § 9721(c.1)(emphasis added).

In essence, this statute provides that a criminal defendant is not entitled to notice of costs at or before sentencing ***at all***, let alone an itemized bill with advice

on how to challenge such costs as Petitioners claim is required[9]. With such notice not being required, Petitioners are unable to establish a clear right to relief as a matter of law as it pertains to their due process claims.

In advancing their claims that a defendant is entitled to a bill of costs from which they can file objections, Petitioners notably rely on Com. v. Coder and Com. v. Allshouse, but both of these cases examine the District Attorney's specific statutory authority[10] to impose their own costs on the defendant, and not the kind of statutorily-required costs at issue in the instant litigation. Indeed, Allshouse relies upon, and provides its own summary of Coder's holding, as: "adopting a trial court's interpretation of 16 P.S. § 1403, *supra,* as requiring that any time a district attorney seeks to charge a defendant with costs he or she must provide the defendant with a bill of costs, thereby giving the defendant the opportunity to file exceptions thereto." Com. v. Allshouse, 924 A.2d 1215, 1229 (Pa. Super. Ct.

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[9] Regardless of the merit of Petitioners' claims, the Clerk of Courts has no ability to amend any CPCMS-generated form to include potential language regarding a criminal defendant's ability to appeal costs.

[10] "All necessary expenses incurred by the district attorney or the district attorney's assistants or any officer directed by the district attorney in the investigation of crime and the apprehension and prosecution of persons charged with or suspected of the commission of crime, upon approval thereof by the district attorney and the court, shall be paid by the county from the general funds of the county. In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant." 16 P.S. § 1403

2007), aff'd, 985 A.2d 847 (2009), cert. granted, judgment vacated sub nom. Allshouse v. Pennsylvania, 562 U.S. 1267 (2011), and aff'd, 36 A.3d 163 (2012).

This shows that the Courts in these two cases ruled upon a separate issue involving separate parties with separate statutory authorization. Therefore, these cases do not constitute precedent upon which Petitioners can establish a clear right to relief as a matter of law. Stated otherwise, Petitioners have not provided any legal requirement for the Clerk of Courts to provide an itemized bill of the standard costs they are ordinarily required to assess at the direction of the sentencing judge. Therefore, Petitioners' assertion that Respondent's failure to provide such an itemized bill constitutes "lack of notice" to support a due process violation has no merit.

Even though Respondents are not required to provide an itemized bill of costs, Petitioners have not established any instance in which a sentencing judge ordered costs on multiple counts, but failed to notify the defendant of same at the time of sentencing, or at the very least by the terms of the sentencing sheet. On the contrary, the facts of record prove that the only time Clerk of Courts employees assess multiple sets of costs is when the sentencing sheet directs them to do so[11].

[11] Petitioners acknowledge that the Clerk of Courts only assesses costs on a subsequent count when so ordered by the sentencing judge: "the judge did not order costs imposed on more than one count, nor did the judge waive costs. As a

Therefore, in order for such costs to be imposed, the Clerk of Courts must be notified in the same manner as the criminal defendant: via the sentencing sheet.

Stated otherwise, Respondents' notification to Petitioners and Class Members that costs will be imposed on multiple counts goes above and beyond what is mandated by statute. In such an instance, a defendant is notified both orally by the sentencing judge, and on their sentencing sheet, that costs will be imposed on multiple counts. In other words, criminal defendants are **notified** of costs being imposed even when state law does not require such notification. Accordingly, the notice requirement of due process is also satisfied in the instant matter, and Respondents' means of imposing and assessing costs does not violate any criminal defendant's due process rights.

Overall, as this Honorable Court has recognized, "Due process is a flexible concept which varies with the particular situation. Ascertaining what process is due entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state." McFalls v. 38th Judicial Dist., 4 M.D.

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result, only one set of costs was imposed in each of these cases." Declaration of Andrew Christy at ¶12.

2021, 2021 WL 3700604, at *11 (Pa.Cmwlth. Aug. 6, 2021)(internal citations omitted).

In the instant matter, the "private interest affected by governmental action," is of course the costs imposed upon criminal defendants. Respondent Clerk of Courts maintains that these costs have been imposed lawfully, but assuming *arguendo* that there is validity to Petitioners' claims that certain costs were imposed *ultra vires*, adequate safeguards exist to protect Petitioners and Class Members from an **actual** deprivation[12].

Even if a deprivation was erroneous, it is evident based on the Pennsylvania Supreme Court's holding in Lopez that a criminal defendant may challenge their costs with their sentencing judge at essentially any time because "[t]here can be more than one 'determination' of the ***amount*** . . . of costs." Lopez at 93.

This opportunity to challenge costs at any time constitutes a valuable safeguard to any individual who may have theoretically been assessed *ultra vires* costs. Given that a sentencing judge, or at least the sentencing sheet, will advise a defendant that costs are imposed on more than one count, a defendant who believes such costs to be *ultra vires* is placed on notice of the costs at the time of sentencing. While it is acknowledged that the defendant is not given an itemized

[12] Petitioner have not proven that any costs have been sent to collections or accrued any kind of late fees for nonpayment.

bill at time of sentencing, they are placed on notice of "duplicate" costs by the sentencing judge's oral order and the sentencing sheet, which again is more notice than is required as a prerequisite to assessment of costs per 42 Pa.C.S.A. § 9721(c.1).

Then, after sentencing, the defendant has the opportunity to either request an itemized bill from the Clerk of Courts, or to check their online docket for the specific costs. If anything appears improper to them at this point, they are entitled to challenge their costs per Lopez's holding that there can be more than one determination of the amount of costs, and per Richardson's holding that the defendant has the ability to challenge the amount of costs actually assessed. If a defendant claims that a particular cost was improperly imposed more than once, he can petition the Court to reduce the amount of his costs by the allegedly-duplicated amount. All of these processes provide an adequate safeguard to protect a particular defendant from a potential erroneous deprivation.

To the extent Petitioners assert that additional or substitute procedural requirements should be required, the Court must consider the administrative burden such requirements would place on Respondents. Petitioners assert that any reasoning why Respondents are unable to provide pre-deprivation notice should be addressed at a later stage of this litigation **after** the instant Application for Summary Relief is decided. However, the controlling law provides that that the

administrative burdens to the government should be considered before determining whether a due process violation exists at all. In this particular situation, pre-deprivation notice would be extremely burdensome to Respondents, and likely not feasible at all. By the very nature of criminal proceedings, it is unclear which charges a defendant may be convicted of, and therefore which costs should be imposed, until the time of sentencing. Negotiations of plea deals, particularly with *pro se* defendants, often happen in the Courtroom immediately prior to sentencing, and so there is a great deal of potential variability in the charges of which the defendant will be convicted[13] versus those which will be *nolle prossed*.

This difficulty is compounded when considering the number of individuals who are sentenced in a given courtroom on a given day. Sentencing judges must already provide a colloquy to each defendant, and then allow each defendant their right of allocution, prior to sentencing. To add an additional colloquy regarding each specific cost to be imposed, the statutory authority for each cost, and instructing each defendant of their right to appeal specific costs would slow criminal proceedings to a halt. Because of this, pre-deprivation notice is impractical, if not impossible.

[13] It is undisputed that certain costs, such as the Substance Abuse Education Fee, are offense-specific.

In summary, Respondent Clerk of Courts submits that while pre-deprivation notice and opportunity to be heard are not possible, the post-deprivation procedures available to criminal defendants satisfy due process requirements. As noted above, court costs are merely incident to a criminal sentence, and are not a part of the sentence itself. Because of this, and in light of Lopez, a criminal defendant may challenge the imposition of court costs at any given time. This is further supported by Richardson's holding that a defendant is permitted to challenge the amount of costs actually assessed.

This clear ability to challenge costs, and the seemingly unlimited time frame in which criminal defendants are permitted to do so, provides adequate safeguards for criminal defendants who were allegedly assessed *ultra vires* costs. Because defendants are not restricted in the timing of when they may challenge costs, the lack of pre-deprivation itemization of costs does not constitute a due process violation. As was noted above, Pennsylvania Courts have repeatedly rejected the notion that an itemized bill of costs is required at the time of sentencing, and so the options available to criminal defendants after sentencing provide adequate notice for such defendants to challenge certain costs if they so choose.

For these reasons, Petitioners are unable to establish a clear right to relief as a matter of law, and therefore their Application for Summary Relief should be denied. Furthermore, Respondent Clerk of Courts has established a clear right to

relief as a matter of law as it pertains to Petitioners' Due Process claims, and so judgment should be entered in the Clerk of Courts' favor.

VI. CONCLUSION

For the foregoing reasons, Respondent Clerk of Courts respectfully requests that Petitioners' Application for Summary Relief be denied in its entirety as it pertains to Petitioners' claims against Respondent Clerk of Courts. Respondent Clerk of Courts further respectfully requests that this Honorable Court grant its Cross-Application for Summary Relief and enter judgment in its favor as to all counts of the Petition for Review.

Respectfully submitted,

/s/Derek A. Keightly, Esq.
RUDOLPH CLARKE, LLC
Lauren A. Gallagher, Esquire
Michael L. Barbiero, Esquire
Gregory R. Heleniak, Esquire
Derek A. Keightly. Esquire
Attorneys for Respondent
Clerk of Courts Lori Schreiber

Dated: April 22, 2024

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.

EXHIBIT “A”

Received 1/13/2023 4:31:25 PM Commonwealth Court of Pennsylvania

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COMMONWEALTH COURT OF PENNSYLVANIA

Amy McFalls, *et al.*, *on behalf of themselves and all others similarly situated,* Petitioners, v. **38th Judicial District, et al.,** Respondents.	No. 4 M.D. 2021 Class Action Original Jurisdiction Judge: Hon. Ellen Ceisler

JOINT STIPULATIONS OF FACT AND LAW SUBMITTED FOR THE JANUARY 25, 2023 CLASS CERTIFICATION HEARING

Joint Stipulations of Fact

1. The Common Pleas Case Management System (CPCMS) provides case management, accounting and reporting functions to the criminal division of the Courts of Common Pleas. The Information Technology Department of the Administrative Office of Pennsylvania Courts creates, maintains and updates statewide case management systems for all three levels of Pennsylvania courts and its administrative offices.

2. CPCMS is used to capture case events in a criminal case in the Pennsylvania courts of common pleas. Each case event is recorded in CPCMS as the case progresses through the system.

3. The public can view public web docket sheets for criminal cases docketed in the courts of common pleas. The public docket sheets for common pleas cases reveal some, but not all, of the information entered into CPCMS.

4. When a defendant pleads guilty or is convicted in a criminal case in the Court of Common Pleas for the 38th Judicial District, a judge will hold a sentencing hearing at which the judge will sentence the defendant and may order the defendant to pay a fine or restitution.

5. By law, the defendant will also be required to pay certain costs that are authorized by statute. These costs will apply to the case whether or not the sentencing judge ordered them, unless they are waived or reduced by the court's finding or order. 42 Pa. C.S. § 9728(b.2).

6. In the 38th Judicial District, it is routine for the presiding judge at a sentencing hearing to order the payment of "costs." Sometimes, when the defendant has pleaded guilty to or been convicted of more than one offense, the sentencing judge will order that the defendant pay costs on more than one offense or count in the case.

7. Prior to 2018, judges in the 38th Judicial District would sometimes order that the defendant pay "costs" on counts that were *nolle prossed* pursuant to a plea agreement. This ceased after the American Civil Liberties Union wrote to the Judicial District to say that imposing costs on charges that had been dismissed violated the law.

8. The costs to be paid by a specific defendant in a specific case, which are set by statute, are not actually determined until a disposition clerk in the Clerk of Courts Office uses CPCMS to assess costs in the case based on the direction of the Disposition Sheet.

9. In general, at sentencing hearings in criminal cases, judges in the 38th Judicial District orally announce the sentence they are ordering on each count that the defendant has pleaded to or been found guilty of and, for each count, may state that "costs" are to be paid by the defendant on that count.

10. Other than specifying the counts on which costs are to be paid, Judges in the 38th Judicial District do not as a matter of standard practice or routine identify or discuss the specific costs that they have ordered a criminal defendant to pay or the dollar amount associated with those specific costs.

11. In the 38th Judicial District, Court Clerks, who are in the courtroom, record all the orders and instructions that a judge issues during a sentencing hearing on a paper form that may be referred to alternatively as a Disposition Sheet, a Sentencing Sheet, or a Green Sheet (hereinafter "Disposition Sheet").

12. Exhibit 7 to Petitioners' deposition of Ali Hasapes is a true and correct copy of the Disposition Sheet that was in use in

the 38th Judicial District on March 31, 2022, when Ms. Hasapes was deposed.

13. Court Clerks record on the Disposition Sheet the counts on which the presiding Judge ordered the criminal defendant to pay costs.

14. Neither the specific costs a criminal defendant legally must pay nor the dollar amount associated with those specific costs is recorded on the Disposition Sheet.

15. If the presiding judge orders costs to be waived in a case, the Court Clerk records that order by writing a note at the bottom of the Disposition Sheet.

16. In most cases, the Disposition Sheet is the only record, apart from the transcript, of what a judge has ordered in a specific case concerning costs. But a judge may issue a separate order addressing costs as the result of a motion from a defendant.

17. As a matter of standard practice or routine, the Court Clerks who record the orders given at the sentencing hearing on the

Disposition Sheet are not the persons who enter such information into CPCMS.

18. Instead, once the Court Clerk completes the Disposition Sheet and the judge signs it, the completed sheet is scanned and electronically delivered to different offices—such as the Probation Office or prison—that need the sentencing information. The sheet is also given to an employee of the 38th Judicial District (the "Criminal Court Assistant"), who updates the case file in CPCMS with certain of the judge's orders, including any term of imprisonment or probation, as well as conditions of sentence or probation imposed by the judge.

19. The Criminal Court Assistant performs one task with respect to the costs recorded on the Disposition Sheet. Referencing the Disposition Sheet, the Criminal Court Assistant indicates "defendant to pay costs" on each count for which the judge ordered costs.

20. The Criminal Court Assistant does not indicate in CPCMS that a defendant is to pay costs on a count unless ordered by the sentencing judge.

21. Once the Criminal Court Assistant performs these updates of the case file, she adds her initials to the Disposition Sheet, scans it, and the case file along with the Disposition Sheet is delivered to the Clerk of Court's office.

22. CPCMS does not contain information as to why a judge ordered costs on more than one count in a case.

23. The Clerk of Courts was told in approximately 2015 by then-Judicial District leadership that if a sentencing sheet indicates that costs are to be imposed on more than one count, that means that the sentencing judge ordered the imposition of all offense-related costs on those counts. An example of this is on page two of the sentencing sheet for Plaintiff Esposito, included in Exhibit 16 to Ms. Jenkins-Phongphachone's deposition. This instruction has not been modified or rescinded.

24. Beginning in 2017 or 2018, the 38th Judicial District began training court clerks to perform the work of the Criminal Court Assistant, i.e., to update the case file in CPCMS with the information recorded on the Disposition Sheet. Because of the disruption caused by the pandemic, that practice has been suspended. For the last two years, and as a current practice, Megan McMullen is the only employee of the 38th Judicial District who serves as a Criminal Court Assistant and updates CPCMS with certain information from the Disposition Sheet.

25. Once the file containing the Disposition Sheet is delivered to the Clerk of Court's office, an employee of the Clerk of Courts (the "Disposition Clerk") will update the financial section of the case file in CPCMS. This includes assessing costs.

26. In cases in which a criminal defendant has been found guilty of more than one count and the Disposition Sheet orders costs on more than one count, employees of the Clerk of Court's office, when assessing costs on the nonlead count, routinely deselect costs that CPCMS selects by default that such an employee knows does not apply.

27. Pursuant to the criminal division judges' directions, the Disposition Clerk or other relevant employee of the Clerk of Court's office will not assess any costs associated with a charge that has been *nolle prossed*, even if the Disposition Sheet records that the presiding Judge ordered the criminal defendant to pay costs on the *nolle prossed* count.

28. All Disposition Clerks in the Clerk of Court's office have been trained to read Disposition Sheets in the same manner and to apply costs in the same manner. In addition, the Clerk of Court's Office employs "verifiers" who check the information entered into CPCMS to ensure that the Disposition Clerk has assessed costs in compliance with the direction of the Disposition Sheet.

29. In the 38th Judicial District, the Clerk of Courts is responsible for collecting fines, costs, and restitution imposed on criminal defendants.

30. In the 38th Judicial District, the court does not administratively provide the criminal defendant or counsel at

sentencing any document that itemizes the costs being imposed and the charges to which they relate.

31. The Clerk of Courts office does not have a practice of automatically providing criminal defendants or their counsel a document that itemizes the assessments that have been put on their case. However, such an itemized list of assessments may be provided upon request of the defendant, and itemized costs can be viewed on online dockets.

32. Petitioners do not have any pending criminal charges against them in Montgomery County.

33. Petitioners have already been sentenced for their cases in Montgomery County.

Joint Stipulations of Law

Class certification in this matter is governed by Rules 1702-1709 of the Pennsylvania Rules of Civil Procedure, The initial burden of proof in a class certification motion is on the proponent.

Dated: January 13, 2022 Respectfully submitted,

/s/ John J. Grogan
John J. Grogan
Mary Catherine Roper
Kevin Trainer
LANGER, GROGAN & DIVER P.C.
1717 Arch St., Ste 4020
Philadelphia, PA 19103
Tel: (215) 320-5660
jgrogan@langergrogan.com
mroper@langergrogan.com

Andrew C. Christy
ACLU OF PENNSYLVANIA
P.O. Box 60173 Philadelphia,
PA 19102 Tel: (215) 592-
1513 Fax: (215) 592-1343
achristy@aclupa.org

Seth Kreimer
3501 Sansom Street
Philadelphia, PA 19104
(215) 898-7447
skreimer@law.upenn.edu

Attorneys for the Petitioners

/s/ Michael Daley
Michael Daley
Nicole Feigenbaum
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326
Fax: (215) 560-5486

Attorneys for Respondents 38th Judicial District, the Honorable Thomas M. Del Ricci, and Michael R. Kehs, Esquire

/s/ Lauren A. Gallagher
Lauren A. Gallagher Michael
L. Barbiero
Gregory R. Heleniak
Rudolph Clarke, LLC 7
Neshaminy Interplex
Suite 200
Trevose, PA 19053
lgallagher@rudolphclarke.com
mbarbiero@rudolphclarke.com
gheleniak@rudolphclarke.com

Attorneys for Respondent Lori Schreiber

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/ Mary Catherine Roper