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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, JASON CRUNETTI, VINCENT ESPOSITO, GREGORY JACKSON, and BRENDA LACY, on behalf of themselves and all persons similarly situated,	:	No.4 M.D. 2021 Class Action Original Jurisdiction
Petitioners,	:	
v.	:	
38TH JUDICIAL DISTRICT, Hon. CAROLYN T. CARLUCCIO, President Judge (in her official capacity), MICHAEL R. KEHS, Esq. Court Administrator (in his official capacity), and LORI SCHREIBER, Clerk of Courts (in her official capacity),	:	
Respondents.	:	

PETITIONERS' CONSOLIDATED REPLY BRIEF IN SUPPORT OF THEIR APPLICATION FOR SUMMARY RELIEF AND OPPOSITION BRIEF TO RESPONDENTS' APPLICATIONS FOR SUMMARY RELIEF

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TABLE OF CONTENTS

Table of Authorities iv

I. Introduction 1

II. Petitioners are Entitled to Summary Relief 2

A. The Court Should Declare that the Duplicate Costs Respondents Have Continued to Impose on the Class Are *Ultra Vires* and Void *Ab Initio*. . 2

1. There Is No Statutory Authority for the Duplicate Costs that Respondents Impose on Some Criminal Defendants. 3

2. The Court Should Reject the Respondents' Arguments that the Commonwealth Cost and the Substance Abuse Education Cost May Be Imposed More than Once in a Single Case. 5

3. The Commonwealth's Longstanding Prohibition on Duplication of Costs Confirms This Statutory Analysis. 12

4. The Clerk's Non-Statutory Argument that Costs May Be Multiplied if a Case Involves More than One Criminal "Incident" Has No Basis in the Law. 13

5. The Absence of the Commonwealth as a Party Does Not Prevent this Court from either Construing the Statutes at Issue or Granting Relief. 16

B. The Court Should Declare that the Duplicate Costs Respondents Have Imposed on Petitioners and the Other Class Members Are Unlawful because They Violate Petitioners' Right to Equal Protection of the Law. 17

C. The Court Should Declare that Both Respondents Have Violated Class Members' Constitutional Right to Due Process by Failing to Provide Notice of the Specific Costs Assessed against Them. 21

1. Petitioners and the Class Are Entitled to Notice of the Specific Costs Imposed and an Opportunity to Challenge that Imposition. 23

2. Petitioners and the Class Have Not Received Sufficient Notice. 29

3. Petitioners and the Class Do Not Receive Sufficient Procedural Protections. 32

III. Respondents are Not Entitled to Summary Relief. 35

A. The Judicial Respondents Are Not Entitled to Dismissal of Petitioners' Claims that They Impose Illegal Duplicated Costs. 36

B. The Clerk of Courts Is Not Entitled to Dismissal of Petitioners' Claims that Her Office Imposes Illegal Duplicated Costs. 40

1. It Is the Clerk's Job to Interpret and Apply Cost Statutes, and *In re Admin. Order No. 1-MD-2003* Does Not Hold to the Contrary. 41

2. The Record Establishes that the Clerk's Office Regularly Interprets and Applies Cost Statutes, including by Determining which Costs Are Duplicated and which Costs Are Not Duplicated in Petitioners' Cases. 43

3. As this Court Has Already Held, the Clerk Is an Appropriate, even Indispensable Party to this Litigation for the Purpose of Providing Relief. 45

IV. Conclusion 48

TABLE OF AUTHORITIES

Cases

Alcatel-Lucent USA Inc. v. Commonwealth, No. 803 F.R. 2017, 2021 WL 4142426 (Pa. Cmwlth. Ct. Sept. 13, 2021) (unpublished), *exceptions sustained*, 290 A.3d 1285 (Pa. Cmwlth. Ct. 2022) 20

Alcatel-Lucent USA Inc. v. Commonwealth, No. 803 F.R. 2017, 290 A.3d 1285 2022 WL 17971289 (Pa. Cmwlth. Ct. Mar. 17, 2022) 20

Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty., W. Va., 488 U.S. 336 (1989) 18, 19, 20, 21

Allshouse v. Pennsylvania, 562 U.S. 1267 (2011) 25

Armour v. City of Indianapolis, Ind., 566 U.S. 673 (2012) 20, 21

Beavers v. Pennsylvania Dep't of Corr., No. 486 M.D. 2020, 271 A.3d 535 2021 WL 5832128 (Pa. Cmwlth. Ct. Dec. 9, 2021) (unpublished) 30, 33

Buck v. Beard, 879 A.2d 157 (Pa. 2005) 23, 24, 37

Clifton v. Allegheny Cnty., 969 A.2d 1197 (Pa. 2009) 21

Commonwealth v. Abbott, 857 WDA 2022, 304 A.3d 719, 2023 WL 4922671 (Pa. Super. Ct. Aug. 2, 2023) 28

Commonwealth v. Adams, 421 A.2d 778 (Pa. Super. Ct. 1980) 12

Commonwealth v. Allshouse, 924 A.2d 1215 (Pa. 2007), *vacated sub nom Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011) 25

Commonwealth v. Black, No. 849 WDA 2019, 258 A.3d 535, 2021 WL 2530965 (Pa. Super. Ct. Aug. 26, 2021) (unpublished) 27

Commonwealth v. Brinson, Nos. 2124 EDA 2020 and 2135 EDA 2020, 2021 WL 4282677 (Pa. Super. Ct. Sept. 21, 2021) (unpublished) 12, 16

Commonwealth v. Bylsma, 897 MDA 2022, 2023 WL 5814419 (Pa. Super. Ct. Sept. 8, 2023) (unpublished) 24, 25

Commonwealth v. Coder, 415 A.2d 406 (Pa. 1980) ..... passim

Commonwealth v. Dipietro, No. 1002 WDA 2015, 2016 WL 2910092 (Pa. Super. Ct. May 17, 2016) (unpublished) 27

Commonwealth v. Gill, 432 A.2d 1001 (Pa. Super. Ct. 1981) 2, 26, 27

Commonwealth v. Houck, 335 A.2d 389 (Pa. Super. Ct. 1975) 2

Commonwealth v. Kin, 2337 EDA 2022, 296 A.3d 630, 2023 WL 2583852 (Pa. Super. Ct. Mar. 21, 2023) (unpublished) 27

Commonwealth v. Klingensmith, 1611 C.D. 2016, 2017 WL 1382225 (Pa. Cmwlth. Ct. April 17, 2017) 9

Commonwealth v. Lopez, 280 A.3d 887 (Pa. 2022) 6, 26, 32, 33

Commonwealth v. Mazer, 24 A.3d 481 (Pa. Cmwlth. Ct. 2011) 26

Commonwealth v. Mitchell, 33 Pa. Super. 345 (Pa. Super. Ct. 1907) 26

Commonwealth v. Snyder, 251 A.3d 782 (Pa. Super. Ct. 2021), *partially vacated on other grounds*, 285 A.3d 881 (Pa. 2022) 7

Cosmas v. Bloomingdales Bros., 660 A.2d 83 (Pa. 1995) 46

General Motors Corp. v. Commonwealth, 265 A.3d 353 (Pa. 2021) 20

Harger v. Washington County Commissioners, 12 Pa. 251 (Pa. 1849) 26

Marks v. Tasman, 589 A.2d 205 (Pa. 1991) 39

McFalls v. 38th Jud. Dist., No. 4 M.D. 2021, 2021 WL 3700604 (Pa. Cmwlth. Ct. Aug. 6, 2021) (unpublished) ..... passim

Michigan v. Bryant, 562 U.S. 355 (2011) 25

Montañez v. Secretary Pennsylvania Department of Corrections, 773 F.3d 472 (3d Cir. 2014) 32

Nelson v. Colorado, 581 U.S. 128 (2017) 23

Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth, 171 A.3d 682 (Pa. 2017) 20

Nordlinger v. Hahn, 505 U.S. 1 (1992) 20, 21

O'Rourke v. Pa. Dep't of Corr., 730 A.2d 1039 (Pa. Cmwlth. Ct. 1999)..... 39

Paterra v. Charleroi Area Sch. Dist., 349 A.2d 813 (1975)..... 46

Richardson v. Pa. Dept. of Corr., 991 A.2d 394 (Pa. Cmwlth. Ct. 2010) 24, 26, 28, 36

Saxberg v. Pa. Dept. of Corr., 42 A.3d 1210 (Pa. Cmwlth. Ct. 2012)..... 36

See Cnty. Comm'rs Ass'n of Pennsylvania v. Dinges, 935 A.2d 926, 932 (Pa. Cmwlth. Ct. 2007) 46

Sherwood v. Pennsylvania Department of Corrections, 268 A.3d 528 (Pa. Cmwlth. Ct. 2021) .....passim

Spotz v. Com., 972 A.2d 125 (Pa. Cmwlth. Ct. 2009)..... 47

Tops Apparel Mfg. Co. v. Rothman, 244 A.2d 436 (Pa. 1968) 38

Volunteer Firemen's Relief Ass'n of City of Reading v. Minehart, 203 A.2d 476 (Pa. 1964) 47

Washington v. PA Dep't of Corr., 306 A.3d 263 (Pa. 2023).....passim

Wells Fargo Bank, N.A. v. Premier Hotels Grp., LLC, 177 A.3d 248 (Pa. Super. Ct. 2017) 39

Statutes

1 Pa.C.S. § 1921..... 13

18 P.S. § 11.1101.....4

18 P.S. § 11.1102.....3

18 Pa.C.S. § 7508.1 ..... 4, 11

42 Pa.C.S. § 1725.1 .....3, 4, 6, 7

42 Pa.C.S. § 1725.4 4

42 Pa.C.S. § 1725.5 3

42 Pa.C.S. § 3571 ..... 4, 7

42 Pa.C.S. § 3575 3

42 Pa.C.S. § 3721 4

42 Pa.C.S. § 3733 4

42 Pa.C.S. § 9730.1 28

44 Pa.C.S. § 2322 3

61 Pa.C.S. § 6308 4

71 P.S. § 611.13 4

72 P.S. § 1795.1- E 4

72 P.S. § 1795.1-E 4

75 Pa.C.S. § 3121 4

Act 17 of March 10, 1905, P.L. 35 ..... 12, 14, 15

I. INTRODUCTION

No Respondent disputes that they regularly impose duplicate costs that are not authorized by statute. Indeed, of the twenty-five cost statutes analyzed in Petitioners' opening Brief, the Judicial Respondents identify only one that they contend may be imposed more than once in a case, while the Clerk of Courts argues that the law is unclear as to another. None of those cost statutes, when properly construed, permits Respondents' practice.

Respondents offer no justification for their arbitrary decisions concerning which costs they duplicate. Nor do Respondents refute the binding authorities Petitioners cite that establish Respondents' joint failure to provide even rudimentary due process. Instead, each set of Respondents points to the other, arguing that it is the other Respondents that are solely responsible for the illegal practices.

The imposition of duplicate costs in a single criminal case is unlawful. In the 38th Judicial District, those unlawful costs are imposed in an arbitrary manner and without the most basic due process—notice and an opportunity to object. All Respondents are responsible for those violations of the law. The Court should grant Petitioners' application for summary relief, deny the Respondents' applications for summary relief, enter a declaratory judgment in Petitioners' favor and against all Respondents, then set a schedule for briefing on further remedies.[1]

[1] Judicial Respondents complain that Petitioners have not set forth all of the relief they seek in their Application. That is, obviously, because the appropriate scope of relief depends on the Court's rulings on liability, as different claims give rise to different potential remedies against different Respondent parties.

II. PETITIONERS ARE ENTITLED TO SUMMARY RELIEF

Petitioners begin, as in the opening Brief, with construction of the cost statutes at issue, which is almost entirely unanswered by Respondents. Then Petitioners will demonstrate that Respondents' non-statutory arguments in defense of imposing costs in derogation of the statutes fail. Petitioners will address Respondents' separate defenses that the nature of their roles precludes liability for the imposition of *ultra vires* costs in Section III, *infra*.

Turning to Petitioners' constitutional claims, Section II.B. explains why summary relief is also appropriate as to Petitioners' Equal Protection claims (Counts IV and V of the Petition for Relief), and Section II.C. why summary relief is also appropriate as to Petitioners' Due Process claims (Counts II and III of the Petition for Relief). Respondents' arguments for summary relief on Petitioners' constitutional claims are the same as their arguments against summary relief for Petitioners, so Petitioners will address those arguments only once.

A. The Court Should Declare that the Duplicate Costs Respondents Have Continued to Impose on the Class Are *Ultra Vires* and Void *Ab Initio*.

It is black letter law that "[A] defendant may be required to only pay costs authorized by statute." *Commonwealth v. Coder*, 415 A.2d 406, 410 (Pa. 1980); *Commonwealth v. Houck*, 335 A.2d 389, 391 (Pa. Super. Ct. 1975) (a court's power to place costs upon a defendant "requires statutory authority"). Costs assessed without statutory authority are *ultra vires* and *void ab initio*. *Coder*, 415 A.2d at 410; *Commonwealth v. Gill*, 432 A.2d 1001, 1009 (Pa. Super. Ct. 1981) (ordering refund of cost not authorized by statute).

Respondents offer no response to these authorities, nor to the detailed statutory analysis in Petitioners' opening Brief, with two exceptions. As Petitioners' statutory analysis makes clear, those two costs, like the other twenty-three addressed in Petitioners' opening Brief, may be imposed just once per case. Petitioners will also dispose of the Clerk's non-statutory and unsupported argument that costs may be multiplied in a single case if the charges describe more than one criminal "incident." Finally, Petitioners will debunk the Judicial Respondents' suggestion that no statutory analysis should occur without the participation of the Commonwealth.

1. There Is No Statutory Authority for the Duplicate Costs that Respondents Impose on Some Criminal Defendants.

It is uncontested that Respondents routinely impose twenty-five individual costs in criminal cases, six of which they do not duplicate and nineteen of which they do duplicate. *See* Pets' Br. at 8; Declaration of Andrew Christy at ¶ 6 and Exhibits 2 (Table of Costs) and 3 (docket sheets with costs highlighted). Those twenty-five costs are:

UNDUPLICATED COSTS
Clerk of Courts Processing Fee (COC Processing Fee Misd/Fel), 42 P.S. § 21061
Crime Lab User Fee (County Lab Fees), 42 Pa.C.S. § 1725.3(a)
Booking Center Fee, 42 Pa.C.S. § 1725.5
DNA Detection Fund, 44 Pa.C.S. § 2322
Offender Supervision Program (OSP), 18 P.S. § 11.1102
CAT/MCARE/General Fund, 75 Pa.C.S. § 6506(a)(1)
DUPLICATED COSTS
Criminal Justice Enhancement Account (CJEA), 42 Pa.C.S. § 3575(b)
County Court Cost, 42 Pa.C.S. § 1725.1(b)

State Court Cost, 42 Pa.C.S. § 1725.1(b)

Automation Fee, 42 Pa.C.S. § 1725.4(b)

Court Child Care, 42 Pa.C.S. § 3721(c)(2)(iii)

Judicial Computer Project, 42 Pa.C.S. § 3733(a.1)(1)(iii)

Access to Justice (ATJ), 42 Pa.C.S. § 3733.1(a)(3)

Criminal Justice Enhancement Surcharge (CJES), 72 P.S. § 1795.1-E(c)(3)(ii))

Judicial Computer Program Surcharge (JCPS), 72 P.S. § 1795.1- E(c)(1)(iv) and (d)

Office of Attorney General Judicial Computer Project (OAG-JCP), 72 P.S. § 1795.1-E(c)(3)(iii)

Crime Victims Compensation, 18 P.S. § 11.1101(a)

Victim Witness Service, 18 P.S. § 11.1101(b)(2) (repealed)

Crime Victim Compensation/Victim Witness Service Variable Amount, 18 P.S. § 11.1101(a)

Domestic Violence Compensation, 71 P.S. § 611.13(b)

Firearms and Education Training Fund, 61 Pa.C.S. § 6308(b)(1)

Substance Abuse Education, 18 Pa.C.S. § 7508.1

Commonwealth Cost, 42 Pa.C.S. § 3571(c)(2)

Emergency Medical Services,75 Pa.C.S. § 3121

PA Transportation Trust Surcharge,75 Pa.C.S. § 6506(a)(2)-(7)

In each instance, the statutory language authorizes the imposition of the cost only once per case. Five of these statutes direct that a cost be imposed "in each judicial proceeding" or "in every criminal case" (Pets' Br. at 18-20); seven of these statutes are even more specific, imposing a cost for the "initiation of an action or proceeding" (Pets' Br. at 20-23); eight other statutes impose a cost on the "person" or "individual" who is convicted (Pets' Br. at 23-25); and four statutes impose costs for a "conviction" of one sort or another (Pets' Br. at 25-27). None of the statutes authorizing the imposition of these costs directs that the cost be imposed on each "count" or each "offense" or otherwise authorizes the duplication of costs. Moreover,

there is no distinction between the statutory language for costs that Respondents choose to duplicate and the costs that Respondents never duplicate.

Respondents do not dispute any of this, except as to the two costs addressed below. Nor do Respondents offer any counter to the statutory construction rule—already invoked by this Court—that any ambiguity in these statutes must be resolved in favor of the criminal defendant. This Court has explained, "where there is any ambiguity within a statute that authorizes the imposition of costs upon a guilty defendant, that statute must be construed narrowly and in the defendant's favor." *McFalls v. 38th Jud. Dist.*, No. 4 M.D. 2021, 2021 WL 3700604, at *12 (Pa. Cmwlth. Ct. Aug. 6, 2021) (unpublished).

Again, other than as to the two costs discussed in the next section, Respondents have offered no rebuttal to this analysis. The Court should grant summary relief in the form of a declaratory judgment that duplication of any of the twenty-five costs that Respondents regularly impose in criminal cases is *ultra vires* and void. Submitted herewith is a list of costs that may be added to the Proposed Order submitted with Petitioners' Application for Summary Relief. (Exhibit 21).

2. The Court Should Reject the Respondents' Arguments that the Commonwealth Cost and the Substance Abuse Education Cost May Be Imposed More than Once in a Single Case.

Respondents substantively defend the duplication of only two of the twenty-five costs at issue here: the Commonwealth Cost and the Substance Abuse Education Cost. Both arguments misread precedent; both should be rejected.

a. Commonwealth Cost

The Judicial Respondents argue that the Commonwealth Cost should be applied per offense to prevent the defendant from receiving a "volume discount" for committing more than one crime, which the legislature could not have intended. They base this argument on the fact that the authorizing statute, 42 Pa.C.S. § 1725.1(b), sets forth different amounts of cost depending on the grading of the defendant's offense. This argument is wrong for two reasons.

First, the majority of the statutes that authorize costs *explicitly* provide for the supposedly problematic "volume discount." They impose a cost once in each "case" or "proceeding" or for the "initiation" of a "proceeding," without regard to how many offenses are charged in the case. When it comes to costs, there is no reason to think that the legislature, in § 1725.1(b) but no other statute, intended to permit the duplication of costs to deter crimes. The cases cited by the Judicial Respondents in support of this argument are about a very different topic—the merging of offenses for *sentencing* purposes.[2] The cited cases might be apt if the issue were the fines that judge could impose as part of a sentence. But the merger of offenses for sentencing purposes has no application to the statutory imposition of costs, which are not part of the punitive sentence. *See Commonwealth v. Lopez*, 280 A.3d 887, 901 (Pa. 2022). Under *Lopez*, "the legal distinctions between fines and costs under Pennsylvania law persist."

[2] The Judicial District's brief cites the correct page number, 1283, in *Commonwealth v. Kimmel*, 125 A.3d 1272 (Pa. Super. Ct. 2015) (en banc), but wrongly attributes the concurrence to Judge Bowes when the concurrence was actually written by Judge Olson and not joined by any other judges.

Commonwealth v. Snyder, 251 A.3d 782, 798 n.14 (Pa. Super. Ct. 2021), *partially vacated on other grounds*, 285 A.3d 881 (Pa. 2022).

Second, Judicial Respondents' argument about the Commonwealth Cost fails because the statute that creates the Commonwealth Cost is the same statute that creates the County Court cost and the State Court cost, and the wording of that statute directs the imposition of a cost "in every criminal case," not per offense. Section 1725.1(b) authorizes the imposition of a single composite cost that is split, pursuant to a different statute, 42 Pa.C.S. § 3571(c)(2), between three different funds: County Court Cost, State Court Cost, and Commonwealth Cost. Section 1725.1(b) directs the *assessment* of "the costs to be charged … by the court of common pleas where appropriate in every criminal case," and Section 3571(c)(2) *allocates* a portion of that assessment to the Commonwealth.[3]

It is Section 1725.1(b) that controls how the Commonwealth Cost is imposed: it is assessed, like the County Court cost and the State Court cost, "in every criminal case," not per offense. For the reasons set forth in pages 18-20 of Petitioners' opening Brief—and not answered by any Respondent—this per "case" language in Section 1725.1 dictates that the cost should be imposed only once in "every criminal case." If this language were ambiguous—and it is not—that ambiguity would require

[3] Petitioners' opening Brief described the Commonwealth Cost as being derived from 42 Pa.C.S. § 3571(c)(2). For the sake of simplicity, here Petitioners use the same framing as the Judicial District and analyze this cost under Section 1725.1(b), which authorizes the imposition of the cost. Either approach leads to the same conclusion: this cost can only be imposed once.

construction of the statute to favor the criminal defendant. *McFalls*, 2021 WL 3700604, at *12.

A declaratory judgment is therefore also appropriate as to the Commonwealth cost.

b. Substance Abuse Education Cost

Respondent Clerk of Courts argues that summary relief cannot be granted as to the Substance Abuse Education Cost because a panel of this Court, in *Sherwood v. Pennsylvania Department of Corrections*, 268 A.3d 528 (Pa. Cmwlth. Ct. 2021), declined to grant summary relief on that petitioner's complaint that one of his dockets showed two entries for the Substance Abuse Education cost, instead of just one. The Clerk does not offer any independent statutory analysis of the Substance Abuse Education cost; the Clerk's sole argument is that because the *Sherwood* panel found the statute unclear, it must remain unclear forever.

The *Sherwood* decision presents no bar to this Court's determination whether the Substance Abuse Education cost can only be imposed once per case—indeed, the *Sherwood* panel explicitly deferred that decision to this Court, in this case.[4]

[4] The Clerk protests that the *Sherwood* decision does not evidence a stay of that case pending resolution of this one. But the *Sherwood* docket does, in several entries beginning July 5, 2023. *See Sherwood v. Pennsylvania Department of Corrections*, 767 MD 2018 (Pa. Cmwlth. Ct.) ("NOW, July 5, 2023, upon consideration of Brentt Sherwood's (Petitioner) "Motion for Requesting Stay of Proceedings" (Motion), seeking a stay of this matter pending the resolution of the litigation in McFalls v. 38th Judicial District (Pa. Cmwlth., No. 4 M.D. 2021), which involves an issue similar to one of Petitioner's remaining claims, to which no response is filed, the Motion is hereby GRANTED.").

In *Sherwood*, a *pro se* inmate raised various challenges to a long list of costs that had been assessed in his many cases, and a panel of this Court patiently reviewed those costs, statute by statute, to conclude that each one was, in fact, imposed in accordance with the law. The Court conducted the same type of analysis for the three costs that Sherwood contended had been improperly charged multiple times, which he claimed was a violation of the Double Jeopardy Clause. *Id.* at 552-53. The Court easily concluded that the Crime Victims Compensation Fund (CVCF) cost had been properly imposed multiple times even though Sherwood was only sentenced once, because that single sentencing included *two separate cases*. It was proper to impose the cost more than once where "a defendant pleads guilty or is convicted in **separate criminal cases**" (with separate docket numbers), even when "sentenced on the same day by the same judge." *Sherwood*, 268 A.3d at 553 (quoting *Commonwealth v. Klingensmith*, 1611 C.D. 2016, 2017 WL 1382225 (Pa. Cmwlth. Ct. April 17, 2017)) (emphasis in original). The Court then explained that the OSP cost appeared on Sherwood's docket twice but was in fact only imposed once because each entry was half the statutory cost, divided between the two statutorily designated recipients of the money. *Sherwood*, 268 A.3d at 553. That cost was split, not doubled. *See* Pets.' Brief at 23-24, n.11.

But the *Sherwood* panel denied summary relief to both parties on the petitioner's objection to the Substance Abuse Education cost appearing twice in a single docket. The County maintained that it had imposed the cost twice because Sherwood had pleaded to two different drug offenses in the same docket, which may have constituted separate criminal incidents. The Court found both the factual predicate

for that position and the statutory language to be unclear, and it therefore declined to award summary relief to either Sherwood or the Respondents on that issue. *Sherwood*, 268 A.3d at 553 ("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."). The Court noted that the same issue was before this Court in this case and later stayed the case as to that claim pending resolution of this case. *Id.* at 554 n.28; note 4, *infra*.

The *Sherwood* panel's decision not to award summary relief to either side does not preclude this Court from conducting an independent analysis of the statutory authorization for the Substance Abuse Education cost and determining that it can only be imposed once per case. Sherwood, a *pro se* inmate, was asserting a claim under the Double Jeopardy Clause and did not offer the statutory analysis to assist that Court that Petitioners have offered here. And this case does not have the factual complications of *Sherwood*, in which all parties assumed the cost had been imposed twice, which appears to have been a mistake. It also appears that the Northumberland Clerk of Courts may have mistakenly assessed the wrong dollar amount for the cost, which is what led to the confusion in the first place about whether the cost was actually imposed more than once.[5] All of which is to say, there is no reason why the

[5] The Substance Abuse Education cost is one of those that *should* appear twice on a docket sheet when it is properly imposed, like the "OSP" probation supervision costs, because the Substance Abuse Education cost is split between two funds: "Of the amount collected, 50% shall remain in that county to be used for substance abuse

confusion in *Sherwood* should preclude the Court from properly construing the statute in this case.

A full statutory analysis requires a finding that the Substance Abuse Education cost, like all of the other costs analyzed here, should be imposed only once per case. *See* Pets' Brief at 23-25. The authorizing statute for the Substance Abuse Education cost states that it is to be imposed "on any individual convicted" for a violation of drug laws or for driving under the influence. "Individual" is singular, and the statute includes no language directing that the costs should be imposed "per offense" or otherwise indicating a legislative intent to impose the cost multiple times per case. The plain language of the statute authorizes its imposition only once per case.

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treatment or prevention programs and the remaining 50% shall be deposited into the Substance Abuse Education and Demand Reduction Fund established under this section." 18 Pa.C.S. § 7508.1(d). If this cost appears *more* than twice on a docket sheet in a single case, then it has been imposed unlawfully. *Compare* Exhibit 7 (docket for Petitioner McFalls, showing correct application of the Substance Abuse Education cost, which appears twice on the docket) with Exhibit 11 (docket for Petitioner Lacy, showing **incorrect** application of the Substance Abuse Education cost, which appears four times on the docket).

The problem in the *Sherwood* case is that the cost appears on his docket twice, but not for $50 each time, as is appropriate (*see* Exhibit 7), but for $100 each time. The County Respondents claim that this means the clerk of courts imposed the cost twice because there were two drug offenses, but if that were true, it would appear *four* times (*see* Exhibit 11). It is most likely that, instead, the Northumberland Clerk of Courts improperly assessed Sherwood the cost applicable under 18 Pa.C.S. § 7508.1 **(c)** instead of the cost applicable under 18 Pa.C.S. § 7508.1**(b)**. 18 Pa.C.S. § 7508.1**(c)** authorizes a cost of $200, which would appear as two assessments of $100, which is what Sherwood's docket shows.

The fact that Respondents do not duplicate the Booking Center Fee and the DNA Detection Fund cost, which use the same operative language, reenforces this reading of the statute. *See* Pets' Brief at 23-25. There is no meaningful distinction between the statutory language that creates the Booking Center Fee and the DNA Detection Fund and the statutory language that creates the Substance Abuse Education cost. Once again, if the Court finds the language of these statutes to be ambiguous, then rules of statutory construction break that tie in favor of the criminal defendant.

A declaratory judgment is therefore also appropriate as to the Substance Abuse Education cost.

3. The Commonwealth's Longstanding Prohibition on Duplication of Costs Confirms This Statutory Analysis.

Petitioners' position is supported by over 100 years of Pennsylvania law, as evidenced by Act 17 of March 10, 1905, P.L. 35, which was codified at 19 P.S. § 1294 and now survives as part of our common law.[6] *See* Pets.' Br. at 31-35. The Judicial

[6] Act 17, although not current statutory law, remains in force as part of Pennsylvania's common law. Pets.' Br. at 32 n. 18. Judicial Respondents do not dispute this. The Clerk of Courts argues that no court has relied upon Act 17 since its repeal, but that argument overlooks the 2021 decision of the Superior Court in *Commonwealth v. Brinson*, Nos. 2124 EDA 2020 and 2135 EDA 2020, 2021 WL 4282677 (Pa. Super. Ct. Sept. 21, 2021) (unpublished), which relied on Act 17 and the Superior Court's prior Act 17 decisions in ruling that only "a single set of costs" was permissible for two separate cases that were consolidated. *Brinson*, 2021 WL 4282677 at *5 (citing *Commonwealth v. Adams*, 421 A.2d 778, 779 (Pa. Super. Ct. 1980) (applying Act 17)).

Respondents brush Act 17 aside with the observation that "the more specific requirements of the cost-imposing statutes in issue here prevail over the common law." Jud. Resp. Br. in Opp.. at 17 n.10. On this point, the Judicial Respondents are correct, and the unrebutted statutory analysis provided by Petitioners is more than sufficient to establish that Respondents' duplication of costs is illegal. But Act 17 provides both an independent bar to Respondents' duplication of costs, and further evidence of the proper statutory construction of the cost statutes listed above. *See* 1 Pa.C.S. § 1921(c)(5) (listing "former law, if any, including other statutes upon the same or similar subjects" as one tool to assist in construing a statute).

4. The Clerk's Non-Statutory Argument that Costs May Be Multiplied if a Case Involves More than One Criminal "Incident" Has No Basis in the Law.

The Clerk offers no citation—not a statute, not a case, not a Rule of Court—that holds that a cost may be duplicated *in contravention of its authorizing statute* when the charges arise from "multiple criminal incidents." That assertion conflicts with binding authority from the Supreme Court that "a defendant may be required to only pay costs authorized by statute," *Coder*, 415 A.2d at 410. Not one of the statutes that authorizes a court cost also authorizes a *different assessment* when the offenses in the case span more than a single criminal incident.

As demonstrated by Petitioners and not rebutted by Respondents, the cost statutes at issue do not impose costs by the "incident," or by the "episode," or "occurrence." Most of them explicitly impose costs for each "case" or each

"proceeding" or for the "initiation of" a "proceeding." That should end the discussion about criminal "incidents." But the Clerk claims that two authorities support a different result.

First, the Clerk cites *Sherwood* as authority for her argument, but *Sherwood* does not hold that costs may be multiplied if the charges describe more than one criminal incident. When that decision addressed the Crime Victims Compensation Fund cost, the Court held that its imposition more than once was proper only because it was imposed in three *separate* criminal cases, each with its own separate docket number. 268 A.3d at 553. By contrast, the Substance Abuse Education cost appeared twice on a single case docket, which the petitioner and the Court assumed meant it had been imposed twice in that case, likely a mistaken assumption. *See* note 5, *supra*. That mistake was bolstered when the County Respondents claimed that the duplication of the cost was appropriate because Sherwood had two drug-related convictions in that case. The Court ultimately *declined to address* whether the County Respondents' theory was correct, based on its view that the statutory language and the record were unclear. Accordingly, the *Sherwood* panel left that statutory construction to this case. Neither *Sherwood* nor any other case holds that costs may be multiplied in derogation of statute if the charges describe more than one criminal incident.

Second, the Clerk invokes Act 17 as supposed support for her argument. But in doing so, she selectively and incompletely quotes from the statute. The Clerk focuses on the language in Act 17 that prohibits the duplication of costs for offenses that "grew out of the same occurrence," and argues that Act 17 must not apply to cases with multiple charges potentially arising from separate occurrences. But the very next

words in Act 17 show that the Clerk's cramped reading is incorrect. The statute prohibits duplicating costs across dockets "where there has been 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 and in one indictment by the use of different counts***." Act 17 of March 10, 1905, P.L. 35 (Exhibit 15) (emphasis added). Act 17, therefore, prohibits the duplication of costs when the charges can legally be filed as part of a single criminal complaint, regardless how many "occurrences" may be involved.

The class definition in this case carefully tracks Act 17, as the class members' cases are all those in which the charges were in fact included in "one complaint … by the use of different counts." The information about the class members' cases provided to this Court at the class certification stage confirmed that each had only one complaint number.

It is time for this Court to reject the assertion—which has never been supported by a shred of authority—that a cost may be duplicated in contravention of statute when the charges arise from "multiple criminal incidents." This also puts to bed the Respondents' suggestion that the propriety of duplicating costs will have to be analyzed class member by class member. There is no basis in *any* cost statute to assess costs differently depending on whether the offenses charged in that case or proceeding describe one or several criminal incidents.[7]

[7] The Judicial Respondents suggest that because "Petitioners concede that at least some costs may be imposed on different counts in a single case," each class member's costs must be reviewed separately. Jud. Resp. Br. at 5 n.4. The Judicial

5. The Absence of the Commonwealth as a Party Does Not Prevent this Court from either Construing the Statutes at Issue or Granting Relief.

The Judicial Respondents' suggestion that this Court should not construe the cost statutes at issue without the presence of the Commonwealth as a party is specious. *See* Jud. Resp. Br. in Opp.. at 5 n.4. Statutory construction is a core judicial function and clearly within this Court's power and authority. This Court routinely construes cost statutes without input from the Commonwealth as the recipient of the funds. *See, e.g., Sherwood*, 268 A.3d at 542-54 (construing cost statutes to determine if costs had been properly assessed). Moreover, the Commonwealth has already declined to participate in this case after being served with the Petition for Review. *See* Proof of Service, McFalls v. 38th Judicial District, 4 M.D. 2021 (January 5, 2021) (Exhibit 17). And finally, the Commonwealth *has* weighed in on the core question whether costs may be duplicated in a single docket, and has done so *in the 38th Judicial District,* in favor of Petitioners' position here. *See Brinson*, 2021 WL 4282677, *5 (The Montgomery County District Attorney, which represented the Commonwealth,

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Respondents are misconstruing the portion of Petitioners' Brief where Petitioners point out that "costs" may be assessed on more than one count in a case where the second or subsequent count provides the predicate for a *unique* cost not already triggered by the lead count. That fact—that a second count in a case may give trigger the imposition of costs that *were not imposed on the lead* count—does not create any difficulty in providing relief to the class members. Petitioners have not argued that it is illegal to impose different costs on different counts in a single case. Petitioners have demonstrated that it is illegal to impose *the same* cost on more than one count in a single case.

agreed "that there should only be one set of costs per case, so any duplicative costs should be vacated.").

B. The Court Should Declare that the Duplicate Costs Respondents Have Imposed on Petitioners and the Other Class Members Are Unlawful because They Violate Petitioners' Right to Equal Protection of the Law.

Respondents argue that their baseless duplication of costs is not the type of arbitrary government action prohibited by the Equal Protection Clause. They are wrong.

The Judicial Respondents accuse Petitioners of complaining about a disparate treatment of statutes, rather than disparate treatment of individuals. But that is nonsense. The criminal defendant, obviously, is forced to pay illegal costs for no good reason and it is the criminal defendant who therefore suffers the disadvantage here.

Next, Respondents argue that there is no Equal Protection violation because, while they violate people's rights, they do so in a "uniform" fashion. But it is not true that Respondents apply these distinctions uniformly, and the fact that a government policy is applied "uniformly" does not save it from being arbitrary and therefore a violation of the Equal Protection Clause.

Petitioners agree that Clerk of Courts employees are trained to "interpret sentencing orders and assess the costs in a uniform way," Joint Stipulation ¶ 28, but that just means that those employees are carrying out the policy distinctions agreed between the Clerk of Courts and the Judicial Respondents. It does not mean that those policy distinctions—and the resulting costs imposed on Petitioners and the Class—are either identical or rationally related to a government interest or policy. In

fact, they are neither. The policy distinctions created and enforced by Respondents result in arbitrary distinctions, even within the group of people Respondents claim to treat equally. That is illustrated in Petitioners' Application for Summary Relief at ¶¶ 6-10, footnotes 2-5, listing the costs duplicated for the named Petitioners, which vary. *See also* Exhibits 7-11. Petitioner Lacy did not pay a duplicate OAG-JCP cost like the others; and Petitioner Jackson did not pay a duplicate Court Child Care cost like the others. Those differences in treatment have no basis in the statutes that authorize those costs, nor any other government interest. Respondents' policy choices are simply arbitrary.

More importantly, the Respondents' claim that they violate the rights of similarly situated people in a "uniform" fashion is not a defense to an Equal Protection claim. When the government makes an irrational distinction between groups that conflicts with the very state law it is intended to implement, that arbitrary policy decision violates Equal Protection, even if it is consistently applied. *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty., W. Va.*, 488 U.S. 336, 346 (1989).

In *Allegheny Pittsburgh Coal*, the Supreme Court found that a county tax assessor's method of valuing property for tax purposes, which created a "relative undervaluation of comparable property [] over time," violated the Equal Protection Clause despite the assessor's consistent application of its policy. In that case, the Webster County tax assessor, from 1975 to 1986, valued real property in the County on the basis of its most recent purchase price. That resulted in gross disparities in property valuation for tax purposes, as properties that changed hands would jump in valuation, while properties that remained with the same ownership would have little,

or no adjustment to their valuation, year on year. The petitioners challenged their assessments as being unfair in comparison to the valuations of surrounding, similar properties, but the state courts held that as long as petitioners' property assessments reflected their market value, their only remedy was to seek upward assessments on properties they did not own. *Id.* at 338.

The Supreme Court reversed. First, the Court noted that West Virginia's Constitution and laws required that all property of the kind held by petitioners be taxed according to its estimated market value. *Id.* at 345. The Court noted that the Webster County assessment method differed from practices elsewhere in the state and "seems contrary to that of the guide published by the West Virginia Tax Commission as an aid to local assessors in the assessment of real property." *Id.* That idiosyncratic policy, the Court held, resulted in valuation disparities that were so irrational as to amount to "intentional systematic undervaluation by state officials" of comparable property. *Id.* at 346.

Key to the Court's decision was the fact that the Webster County assessment scheme conflicted with the State Constitution and related laws requiring equal valuation, *which left no rational basis to justify the practice*. *Id.*, at 344-345. That is what is happening here. Respondents have decided to impose court costs in a manner that is manifestly at odds with the governing statutes, and they have offered no reason for the distinctions they make about which costs will be duplicated and which will not. Respondents' claim that they apply these arbitrary distinctions in a uniform way does not remedy the constitutional violation. As in *Allegheny Pittsburgh Coal*, the resulting burden on Petitioners and the Class violates Equal Protection.

The United States Supreme Court has noted that *Allegheny Pittsburgh Coal* sets out an "exception" in Equal Protection analysis, but it is one that remains viable. As that Court recently explained, "*Allegheny*, … involved a clear state law requirement clearly and dramatically violated. Indeed, we have described Allegheny as 'the rare case where the facts precluded' any alternative reading of state law and thus any alternative rational basis." *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 687–88 (2012) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 16 (1992)).

This Court, as well, has relied upon *Allegheny Pittsburgh Coal*. In *Alcatel-Lucent USA Inc. v. Commonwealth*, No. 803 F.R. 2017, 2021 WL 4142426 (Pa. Cmwlth. Ct. Sept. 13, 2021) (unpublished), *exceptions sustained*, 290 A.3d 1285 (Pa. Cmwlth. Ct. 2022), Judge Wojcik relied upon *Allegheny Pittsburgh Coal* in holding that the corporate income tax rule challenged by the petitioner violated the Equal Protection Clause: "Although the rational basis standard is relatively lax, when a tax classification violates a state's own law, it cannot meet the standard. *See Allegheny Pittsburgh Coal*, 488 U.S. at 345." *Alcatel-Lucent USA*, 2021 WL 4142426, *7.[8] *See also Clifton v. Allegheny Cnty.,* 969

[8] The *Alcatel-Lucent* panel nonetheless denied the petitioner retrospective relief, based on the Court's conclusion that the Supreme Court's decision in *Nextel Communications of the Mid-Atlantic, Inc. v. Commonwealth*, 171 A.3d 682 (Pa. 2017), did not apply retroactively and thus precluded retrospective relief. After that panel decision, the Supreme Court decided the appeal in *General Motors Corp. v. Commonwealth*, 265 A.3d 353 (Pa. 2021) ("*GM II*"), which involved similar issues regarding retroactivity. Sitting en banc, this Court reversed its decision as to the availability of retrospective relief. *Alcatel-Lucent USA Inc. v. Commonwealth (Alcatel-Lucent II)*, No. 803 F.R. 2017, 290 A.3d 1285 2022 WL 17971289 (Pa. Cmwlth. Ct. Mar. 17, 2023) (unpublished) ("We are now tasked with applying *GM II* to the Exceptions filed here. For the reasons that follow, we sustain Taxpayer's Exceptions and remand to F&R for the issuance of a refund.").

A.2d 1197, 1211 (Pa. 2009) ("[W]hen a method or formula for computing a tax will, in its operation or effect, produce arbitrary, unjust, or unreasonably discriminatory results, the uniformity requirement is violated. . . . *accord Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County, W. Va.,* 488 U.S. 336, 345 (1989)).[9]

To paraphrase the United States Supreme Court, this is "the rare case where the facts preclude[] any plausible inference" that Respondents' policies have even a rational basis. *See Nordlinger*, 505 U.S. at 16. This case, like *Allegheny Pittsburgh Coal*, "involve[s] a clear state law requirement clearly and dramatically violated." *Armour*, 566 U.S. at 687. Petitioners are entitled to a declaratory judgment that Respondents' duplication of costs violates Petitioners' and the Class members' right to Equal Protection.

C. The Court Should Declare that Both Respondents Have Violated Class Members' Constitutional Right to Due Process by Failing to Provide Notice of the Specific Costs Assessed against Them.

It is uncontested that Respondents do not provide criminal defendants with a detailed list of costs assessed against them or with an opportunity to challenge the propriety of those costs. This is in plain violation of Class members' constitutional due process rights.

Respondents do not dispute that they *could* provide class members with notice of each of the costs assessed against them, whether in the form of a bill of costs or some other constitutionally adequate notice. The Clerk of Courts says she will provide

[9] The "analysis under the Uniformity Clause of the Pennsylvania Constitution is generally the same as the analysis under the Equal Protection Clause of the United States Constitution." *Clifton*, 969 A.2d at 1211 n.20.

a bill of costs when asked, *see* Pets' App. ¶ 55 (bill of costs provided on request), but her independent legal interpretation—resting uneasily with her argument that she has no capacity to interpret the law—is that no bill of costs is required.

The Judicial Respondents claim this is entirely the purview of the Clerk of Courts and deny having any role whatsoever in what the Clerk of Courts does or does not do. Yet the Clerk of Courts pleads that it relies on instructions from the Judicial Respondents on how to address costs.

Ultimately, it does not matter which entity provides notice. The Judicial Respondents can do this as part of the process of providing sentencing information to defendants. The Clerk of Courts can do this when it determines which costs to assess and begins collections. The joint failure by all Respondents to meet their constitutional obligations renders both liable for violating the class members' procedural due process rights.

In defending their practices, Respondents make three general arguments:

- Class members are not entitled to any notice of the specific costs that Respondents assess against them;
- Even if notice is constitutionally required, there are already sufficient notice opportunities for defendants to learn of what they must pay; and
- There are sufficient post-deprivation processes available to class members, so it does not matter that Respondents do not provide notice or pre-deprivation process.

Each of Respondents' arguments fails because the class members are entitled to full procedural due process protections when costs are imposed on them, which

means that they must receive "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *McFalls*, 2021 WL 3700604 at *111 (internal quotations and citations omitted). Under Respondents' current system, that does not occur. For the reasons set forth below, this Court should both deny Respondents' Applications for summary relief and grant Petitioners' request for declaratory relief.

1. Petitioners and the Class Are Entitled to Notice of the Specific Costs Imposed and an Opportunity to Challenge that Imposition.

a. Class members' fundamental right to due process requires notice of which costs are assessed against them.

It is well settled, under binding United States and Pennsylvania Supreme Court precedents, that the assessment of court costs implicates a property interest protected by due process. *See*, *e.g.*, *Nelson v. Colorado*, 581 U.S. 128, 136 (2017) (due process governs the assessment and collection of fines, costs, and restitution); *Buck v. Beard*, 879 A.2d 157, 160 (Pa. 2005) (due process applies to collection of fines, costs, and restitution from inmates); *see also McFalls*, 2021 WL 3700604 at *12.

All Respondents are responsible for imposing costs in the 38th Judicial District—the Clerk of Courts manually adds the costs based on instructions from the Judicial District—and therefore all are responsible to ensure constitutionally adequate notice, *i.e.*, "a meaningful opportunity to be heard, encompassing participation at a time when it will be meaningful." *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 578 (Pa. 2018). Here, where collections begin as soon as costs are imposed in the CPCMS system, Pets.' Application at ¶ 59, that means that notice must be

provided before or at the time costs are imposed so that criminal defendants have a meaningful opportunity to challenge such costs.

Respondents concede it is possible to provide that notice when Respondents assess costs, as is done by other courts in Pennsylvania. *See, e.g., Commonwealth v. Bylsma*, 897 MDA 2022, 2023 WL 5814419, *7-8 (Pa. Super. Ct. Sept. 8, 2023) (unpublished) (defendant objected to certain costs "listed in the Clerk of Courts' itemized list of costs"). They simply choose not to.

b. Respondents' arguments about whether notice is required *at sentencing* and whether it comes in the form of a "bill of costs" do not refute Class members' fundamental right to notice of which costs are assessed against them.

Instead of acknowledging their constitutional obligation, Respondents rely on strawman arguments. The Clerk's argument that criminal defendants are not entitled to a listing of costs that will be assessed *at sentencing* is irrelevant. *See* Clerk Br. at 32. Defendants are entitled to notice of the specific costs that are to be assessed and an opportunity to object to those costs, and that does not happen in the 38th Judicial District at any point during or after criminal proceedings. The cases relied on by the Clerk—*Richardson v. Pa. Dept. of Corr.*, 991 A.2d 394 (Pa. Cmwlth. Ct. 2010) and *Sherwood*—only hold that the sentencing judge need not list all of the costs at sentencing because it is appropriate to allow the clerk of courts to determine which specific costs should be imposed. No court has ever held that notice of those costs need *never* be given.

In an astounding turn, Respondents also argue, relying on *Buck v. Beard* and other authorities, that no notice is required after the Clerk assesses costs because the

sentencing itself provides all the process due. But the *Buck* decision is based on a factual predicate that Respondents have stipulated is absent here. In *Buck,* defendants were told *at sentencing* which costs they owed and thus had a chance to object. *See Buck*, 879 A.2d at 160 (inmates received "notice and an opportunity to be heard at [their] sentencing hearing[s]" on what they owe). In the 38th Judicial District, Respondents wait until *after* sentencing to impose costs. Indeed, they never actually tell the defendants which costs were assessed, and they never inform defendants how they might challenge the assessment of specific costs. The fact that Respondents put off the determination of costs until after the sentencing does not create a due process loophole where they are never required to give notice of costs.

Next, Respondents quibble over whether notice must come in the form of a "bill of costs." Providing a timely bill of costs is one way to fulfill Respondents' constitutional notice obligation. *See Coder*, 415 A.2d at 410; *Commonwealth v. Allshouse*, 924 A.2d 1215 (Pa. 2007), *vacated sub nom Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011)[10] (it is "well-settled" that a defendant must receive a bill of costs).[11] Using a bill

[10] The judgment in this case was vacated by *Allshouse v. Pennsylvania*, 562 U.S. 1267 (2011), because of the Supreme Court's decision in *Michigan v. Bryant*, 562 U.S. 355 (2011), concerning the Confrontation Clause. This subsequent history does not disturb the separate holding on costs.

[11] For example, the Superior Court has recently addressed a challenge to certain costs "listed in the Clerk of Courts' itemized list of costs," after the trial court noted that it had "no reason to question the calculation of the Clerk of Court." *Commonwealth v. Bylsma*, 897 MDA 2022, 2023 WL 5814419, *7-8 (Pa. Super. Ct. Sept. 8, 2023) (unpublished). *See also Commonwealth v. Hower*, 406 A.2d 754, 755 (Pa. Super. Ct. 1979) (describing the bill of costs presented by the clerk of courts, from which the

of costs to provide the defendant with adequate notice is not some new concept—it is a long-established practice. *See, e.g., Commonwealth v. Mitchell*, 33 Pa. Super. 345, 347-48 (Pa. Super. Ct. 1907) (*per curiam)* (defendant must have the opportunity to receive bill of costs and challenge illegal costs before they are collected); *Harger v. Washington County Commissioners*, 12 Pa. 251, 254 (Pa. 1849) (costs cannot be taxed and collected through a bill of costs when the record shows "[n]o items are mentioned, and no sum is set out"). It is a straightforward obligation with which Respondents have declined to comply, even though other courts are able to do so.

Respondents argue that *Coder*—and therefore all of the cases Petitioners cite—only pertain to one specific type of court cost: the costs incurred by the prosecution under 16 P.S. § 1403. No court opinion has ever suggested that interpretation, and for good reasons.

First, "Costs of prosecution"—the term used in *Coder* that Respondents argue is somehow distinct from all of the other "statutory costs"—is well-established to be interchangeable with and synonymous with court costs more broadly. As this Court has explained, "it is clear that based on our decision in *Richardson*, 'costs of prosecution' also include 'court costs,'" *Commonwealth v. Mazer*, 24 A.3d 481, 484 (Pa. Cmwlth. Ct. 2011), and the two terms are "identical." *Sherwood*, 268 A.3d at 546 (court instruction to pay "costs of prosecution" authorized the imposition of all "court costs"); *see also Lopez*, 280 A.3d at 910 (discussing court costs and costs of prosecution

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defendant successfully had several items stricken); *Gill*, 432 A.2d at 1004 (defendants received a "Clerk of Courts Cost Docket" that listed the costs to which they then objected).

interchangeably). *All* of these costs are "statutory costs," "costs of prosecution," and, more generally, court costs.

Second, *Coder*'s twin holdings—that a defendant must receive a bill of costs and that the burden is on the Commonwealth to demonstrate the legality thereof—have been repeatedly applied to *all* costs, not just the district attorney's costs under Section 1403. *See, e.g.*, *Gill*, 432 A.2d at 1004 (challenge to multiple costs set forth in a bill of costs by the clerk of court). Our courts continue to cite *Coder* concerning all types of courts costs. *See Commonwealth v. Kin*, 2337 EDA 2022, 296 A.3d 630, 2023 WL 2583852, *3 (Pa. Super. Ct. Mar. 21, 2023) (unpublished) (applying *Coder* in case about sheriff's costs imposed under 42 Pa.C.S. § 9728).

Respondents cite three unpublished Superior Court cases for the proposition that defendants do not have to receive a "bill of costs," and presumably never have to receive any sort of notice, at all.[12] None says anything of the kind. The *Black* court found the issue waived. *Commonwealth v. Black*, No. 849 WDA 2019, 258 A.3d 535, 2021 WL 2530965, *2 (Pa. Super. Ct. Aug. 26, 2021) (unpublished). The *DiPietro* court addressed whether the specific costs to be assessed must be itemized before a defendant enters a plea, not whether the defendant is ever entitled to notice and an opportunity to object to the costs assessed. *Commonwealth v. Dipietro*, No. 1002 WDA 2015, 2016 WL 2910092, at *3 (Pa. Super. Ct. May 17, 2016) (unpublished). And

[12] Both Respondents fail to note that *Black*, *Dipietro*, and *Abbot* are non-precedential, unpublished opinions, an omission that violates Pa.R.A.P. 126. In addition, neither party may properly cite or rely on *Dipietro*, as it is a non-precedential decision from the Superior Court issued prior to May 1, 2019; Petitioners cite it here only to adequately address Respondent's arguments premised on the case.

Abbott reasoned that the obligation to assess the costs lies with the clerk of courts and need not be reflected in an order signed by a judge. *Commonwealth v. Abbott*, 857 WDA 2022, 304 A.3d 719, 2023 WL 4922671, *7 n.2 (Pa. Super. Ct. Aug. 2, 2023) (unpublished). None of these decisions addresses the constitutional right to due process or rebuts the constitutional obligation to provide notice in the form of a bill of costs or other document that tells the defendant which costs have been imposed. These cases simply confirm that this notice need not be provided by the sentencing judge. Instead, consistent with this Court's decision denying Respondents' preliminary objections and *Richardson*, the obligation falls on Respondents through their administrative processes. *McFalls*, 2021 WL 3700604, at *12.

c. The Clerk's argument that no notice is due because Class members have suffered no deprivation is simply untrue.

The Clerk suggests that no constitutional violation has occurred because there is no evidence to "suggest that any of Petitioners' or Class Members' outstanding costs have been sent to collections or accrued any kind of late fees due to nonpayment." Clerk Br. at 28 n.6. The Clerk of Courts is wrong on both counts. Numerous class members had their court costs sent to a private debt collections agency, which resulted in an increased debt collection fee proportional to the unlawful amount of duplicated costs.[13] *See* 42 Pa.C.S. § 9730.1(b)(2) (a fee of up to 25% "shall

[13] As just two examples, the class member in CP-46-CR-0000300-2017 had her case sent to a private debt collections agency by Respondents, which added a collections fee of $1,258.84 on the line "ARB Collect (Montgomery)," which refers to the collections fee. Pets.' Ex. 3. Similarly, the class member in CP-46-CR-0007702-2015 had his case sent to a private debt collections agency, which added a collections

be added to the bill of costs to be paid by the defendant" when a case is sent to a private debt collection agency). Others class members have *already* paid hundreds or thousands of extra dollars in illegally duplicated costs.[14]

2. Petitioners and the Class Have Not Received Sufficient Notice.

After arguing that class members are not entitled to notice, Respondents then argue that class members in fact receive sufficient notice because: (1) they are told at sentencing that "costs" are imposed; (2) they could affirmatively ask for a bill of costs or look at costs on an electronic docket sheet; and (3) there is statutory notice that costs will be imposed. The first two arguments, as Petitioners' opening Brief explains, fail to satisfy due process requirements, and the third has been rejected by our Supreme Court.

First, as a factual matter, references to unspecified "costs" by a judge or on a sentencing order do not tell the defendant which costs will be assessed or enable them to object to costs that are improper.[15] And, for all of the reasons set forth in

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fee of $382.50. Pets.' Ex. 3. Those debt collection fees were higher *because* of the unlawful duplicated costs, and the duplicated costs were among those that were collected by the private debt collectors.

[14] An example is the defendant in *Commonwealth v. Wettlaufer,* CP-46-CR-0000481-2017, whom Petitioners identified in footnote 1 of Petitioners' opening Brief as having been assessed *fifteen sets of costs in a single case*. That individual paid all of the costs assessed in that case. (Exhibit 6, page 13, showing no outstanding balance). Class members have paid funds that they should not have paid.

[15] At most, defendants hear at sentencing that they owe "costs," potentially on multiple counts, and receive a sentencing order that says the same. Petitioners' App. ¶ 22. The judge does not tell the defendant which costs the defendant must pay, nor the amount of those costs. Petitioners' App. ¶ 23-24. Instead, it takes up to two weeks for

Petitioners' opening Brief at pages 45-46, none of which have been answered by Respondents, the existence of an online docket that lists costs (without notice which offenses with which they correspond) does not satisfy due process. It is particularly clear that the existence of the docket cannot suffice for notice when Respondents do not inform class members that the online dockets exist and when those dockets are not accessible to incarcerated defendants. Finally, requiring a class member to take affirmative action to try to learn which costs were assessed by searching for an online docket or asking the Clerk for a bill of costs "flips the due process burden on its head." *Beavers v. Pennsylvania Dep't of Corr.*, No. 486 M.D. 2020, 271 A.3d 535 2021 WL 5832128, *7 (Pa. Cmwlth. Ct. Dec. 9, 2021) (unpublished) (McCullough, J., dissenting), *abrogated by Washington v. PA Dep't of Corr.*, 306 A.3d 263, 294-95 (Pa. 2023); *see* Petitioners' Brief at 45. Respondents simply do not provide class members sufficient notice to determine if—as in this case—they have been assessed illegal costs. The result has been Respondents' illegal imposition of duplicated costs since at least 2008.

In lieu of providing notice, Respondents now argue that the existence of statutes providing for the assessment of costs even if the judge fails to specifically

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the Clerk of Courts to determine which costs to assess and then add them to the class members' case. Petitioners' App. ¶ 59. Even at that point, neither Respondent provides a bill of costs to defendants. Petitioners' App. ¶ 54-55. They receive no paperwork from either Respondent that lists which costs they owe or how many times each individual cost has been assessed. *Id.* The Clerk of Courts immediately begins collections by sending a document with the total dollar amount owed and a date by which payment is due, but without ever telling the defendant *which* costs are owed. Petitioners' App. ¶ 57.

order them, 42 Pa.C.S. §§ 9721(c.1) and 9728(b.2), provides all the notice that Petitioners and the Class members require. The first problem with this argument is that Respondents *have imposed costs that are not permitted by any statute*. No statute gives notice that Respondents will impose costs without statutory authority.

More fundamentally, Sections 9721 and 9728 cannot replace the requirements of due process, and there is no reason to believe they were intended to do so. The only reason those statutes are not themselves unconstitutional is because of the separate constitutional obligation to provide notice of the costs assessed and an opportunity to challenge them. The statutes do not attempt to substitute for that process: at best, they inform a defendant is that they will have to pay "costs:" those statutes, like the sentencing order in the 38th Judicial District, do not set forth the specific costs to be assessed. Moreover, costs are not "automatically" assessed: an individual Clerk of Courts employee must look at the offense, determine which specific costs are applicable, and then add the costs to the case in the CPCMS computer system. Only Respondents can tell the class members *which* costs those are, so that the class members can make a knowing decision of whether the costs imposed were statutorily authorized and thus subject to challenge.

Finally, the Supreme Court has made clear that legislative notice of an obligation to pay costs does not satisfy constitutional due process. In *Washington v. DOC*, the Court addressed a different subsection of 42 Pa.C.S. § 9728 concerning deductions from inmate accounts and rejected the notion that such statutes provide adequate notice for purposes of due process. *See Washington v. DOC*, 306 A.3d at 294 (explaining that the Court's precedents regarding the due process rights of inmates to

the funds in their accounts deducted to pay fines and costs would be "rendered moot" by such a theory).

3. Petitioners and the Class Do Not Receive Sufficient Procedural Protections.

The complete lack of notice renders Respondents liable for violating the class members' due process rights. Notice is a prerequisite of all procedural due process, whether that process occurs before or after the deprivation of the protected property interest. Without notice, defendants have no opportunity to challenge costs that have been assessed illegally.

Respondents are wrong in suggesting that the Class has received sufficient due process to excuse the lack of notice. Both our Supreme Court and the United States Court of Appeals for the Third Circuit have held that a person is entitled to pre-deprivation due process (notice and an opportunity to object) *regardless* of whether there could be an adequate post-deprovision remedy to compensate. *Washington v. DOC*, 306 A.3d at 297; *Montañez v. Secretary Pennsylvania Department of Corrections*, 773 F.3d 472, 483 (3d Cir. 2014). "Process" without notice is no process at all.

Respondents attempt to dodge their failure to provide notice by arguing that Class members all have an adequate post-deprivation remedy because, they argue, if a class member (somehow) learns that costs have been imposed unlawfully, then the Supreme Court's decision in *Commonwealth v. Lopez* that costs are not a part of the sentence would allow the defendant to challenge those costs at any time. But *Lopez* is about challenges based on the defendant's *ability to pay* those costs, not whether the costs were lawful. *See Lopez*, 280 A.3d at 891 ("We granted discretionary review to

consider whether Pennsylvania Rule of Criminal Procedure 706(C) requires a trial court to consider a defendant's ability to pay prior to imposing mandatory court costs at sentencing."); Pa.R.Crim.P. 706(C) (addressing ability to pay).

Even if *Lopez* does apply, that does not satisfy due process. A person who does not know what costs have been imposed has no reason to challenge them; that is why, as is explained in Petitioners' opening Brief, the burden is always on the *government* to provide affirmative notice. Pets'. Brief at 45. *See also Beavers,* 2021 WL 5832128, *7 (McCullough, J., dissenting) ("It is the Department's obligation to provide notice of a property deprivation; it is not an inmate's burden to invite the Department to meet its *Bundy* obligations.").

Our Supreme Court has instructed that governmental entities may only rely on post-deprivation processes in "rare circumstances" such as when a "pre-deprivation process is not feasible." *Washington v. DOC*, 306 A.3d at 297. This is not one of those rare circumstances. There are several ways that Respondents could provide adequate notice, either by adopting procedures at sentencing to assess the costs at the same time the fines and restitution are assessed, or by delaying collection once the Clerk of Courts assesses the costs to allow time for the defendant to receive a bill of costs and lodge objections. Petitioners have never argued that the *only* acceptable form of notice would be notice at the sentencing hearing[16]—but any later notice must be

[16] Notably, Respondents' deposition testimony establishes that Respondents were exploring alternative options to change the way in which they imposed costs, until those efforts were derailed by the COVID-19 pandemic. Respondents' goal was to enter dispositions "into CPCMS live" by having a CPCMS operator sit in a jury

accompanied by a meaningful opportunity to challenge the imposed costs *before* they go into effect and collections begin.[17]

Respondents have pointed to no record evidence that constitutionally adequate notice is somehow impossible. As the Judicial District's deposition witness noted, "every county does things differently from the next county," with the court in Philadelphia, for example, having a "totally different" system where all of the information is directly input into CPCMS at sentencing. Deposition of Meg McMullen, April 20, 2022, at 73:6-8; 75:8-12. (Exhibit 19) (full deposition is appended to Jud. Resp. Br. in Opp.). There are, unquestionably, ways for Respondents to satisfy their constitutional obligations, not least of which is simply to send an itemized bill at the same time the initial collections letter is sent, that also tells defendants they may challenge those costs before any payment is due.

What the ultimate remedy looks like is a matter for the next phase of this proceeding. The question for the Court now is whether Respondents' complete failure

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room behind active courtrooms to enter the dispositions until "COVID hit and that all kind of went away." Deposition of Ali Hasapes, March 31, 2022, at 28:20-29:4. (Exhibit 18) (full deposition is appended to Jud. Resp. Br. in Opp.). Under that scenario, it would seem that the disposition clerks who assess costs would be able to participate in real time. *See* Petitioners' App. ¶ 37. They also reviewed what another court did and tried to implement a system that would allow them to complete their work "within an hour or two." Hasapes Dep. 39:9-15.

[17] The Clerk of Courts states in a footnote that it has no ability to modify any CPCMS forms to provide a bill of costs or to tell a class member how to challenge costs. *See* Clerk Br. at 33 n.9. There is no evidence that the Clerk could not use the same process through which it sends its Introduction Letter to send a bill of costs and provide an opportunity to object before collection begins. Those are all possibilities to be explored at the remedies phase.

to provide any pre-deprivation due process is unlawful. Because it is, the Court should issue a declaratory judgment in Petitioners' favor and deny Respondents' applications.

III. RESPONDENTS ARE NOT ENTITLED TO SUMMARY RELIEF

The Clerk of Court and the Judicial Respondents each claim to be powerless to determine which costs are assessed in the criminal cases they administer and each claim that they bear no responsibility for the illegal costs they continue to impose and claim that they should be dismissed from the case. Each cites cases from very different contexts that are inapposite on this record. And each ignores the Supreme Court's recent opinion in *Washington v. DOC* that makes their joint liability clear.

In addition, the Judicial Respondents now claim to have a different understanding of their instructions on duplicating costs than does the Clerk. The new disagreement between the Clerk and the Judicial Respondents concerning those instructions might be important to a crossclaim between those parties, were there one. But there is no crossclaim, and a dispute between Respondents does not relieve either of responsibility for their stipulated joint policy of imposing duplicative costs in contravention of statute.

Petitioners will address their arguments in turn.[18]

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[18] Each set of Respondents also seeks summary relief as to Petitioners' Equal Protection and Due Process claims, but those arguments are not specific to the separate functions of the Respondents and so are identical to their arguments in opposition to Petitioners' Application for Summary Relief, which are addressed *supra*.

A. The Judicial Respondents Are Not Entitled to Dismissal of Petitioners' Claims that They Impose Illegal Duplicated Costs.

The Judicial Respondents argue that they have no responsibility for the duplication of costs in contravention of statute: (1) as a legal matter, because the assessment of costs is a "ministerial" task for the Clerk; and (2) as a factual matter, because they have no say in which costs the Clerk assesses. Both arguments conflict with the stipulated facts in this case.

In support of their "legal" argument, the Judicial Respondents repeatedly cite prior decisions of this Court that hold that the calculation of the amount of costs imposed in a criminal case is a ministerial role appropriate for a county clerk of courts. *See* Jud. Resp. Br. in Opp. at 1, 3, 11, 15, 16) (citing *Saxberg v. Pa. Dept. of Corr.*, 42 A.3d 1210, 1213 (Pa. Cmwlth. Ct. 2012); *Richardson*, 991 A.2d at 397). But none of those authorities states that when a Judicial District or its administrators *tells the Clerk of Courts how to calculate costs*, they bear no responsibility for what the Clerk of Courts then does. The parties have stipulated in this case, based on discovery, that the Judicial Administration gave the Clerk exactly such an instruction. *See* Joint Stipulation ¶ 23. And, as the Clerk points out, Clerks of Court are required to follow the administrative orders of the Judicial Administration.

Moreover, our Supreme Court has made clear that a government actor cannot seek to avoid liability on the basis of a supposed lack of discretion when it has, as a matter of practice, exercised discretion in precisely the manner in question. In *Washington v. DOC*, the DOC argued that it owed the petitioner no notice of its revised policy concerning inmate account deductions because Act 84 left the DOC no

discretion in the amount of those deductions. The Supreme Court rejected that argument because it was clear from the record that the DOC had, *as a matter of fact*, exercised discretion in administering the statutory deductions:

> Moreover, the DOC does not treat the amendment to Act 84 as establishing an absolute floor for deductions from an inmate's account. By the terms of the Current DOC Policy issued after the 2019 amendment, the Department retained discretion to refrain from making Act 84 deductions from inmate accounts at all if their balances do not exceed ten dollars, a consistent policy since we first noted its existence in *Buck*. *Buck*, 834 A.2d at 700 n.7.… Thus, the DOC's application of Act 84 through the Current DOC Policy demonstrates that it operates with discretion to depart downward from the 25% minimum deduction rate.

Washington v. DOC, 306 A.3d at 295-96. In the same way, the Judicial Respondents' claim that they cannot bear any responsibility for how the Clerk assesses costs conflicts with the factual record in this case.

The Judicial Respondents therefore offer a spin on the facts, an attempt to back away from the stipulation they made that the "Judicial District leadership" told the Clerk of Courts how to assess costs when the sentencing order calls for costs on more than one count. That stipulation states:

> 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**.

Joint Stipulations of Fact ¶ 23 (emphasis added).

To counter that Stipulation, the Judicial Respondents have submitted an Affidavit from District Court Administrator Michael Kehs that states in relevant part:

> 11. While I am aware of the general interpretive guidance referred to in paragraph 23 of the Joint Stipulation of Facts and Law Submitted for the January 5, 2023 Class Certification Hearing, after reasonable investigation, I have uncovered no evidence to support the claim that the 38th Judicial District's leadership instructed the Clerk of Courts to assess or not to assess specific statutory costs, nor do I have any personal recollection of any such instruction.

Kehs Affidavit ¶ 11. That, of course, does not undermine the Joint Stipulation. First, as a matter of law, the Judicial Respondents are estopped from changing their factually admitted position this late in the litigation. "Admissions of this type, i.e., those contained in pleadings, stipulations, and the like, are usually termed 'judicial admissions' and as such cannot later be contradicted by the party who has made them." *Tops Apparel Mfg. Co. v. Rothman*, 244 A.2d 436, 438 (Pa. 1968). Second, Mr. Kehs's Affidavit does not directly rebut the previous admission. Mr. Kehs acknowledges that the Judicial Administration provided "interpretive guidance" to the Clerk. And Mr. Kehs' professed "lack of evidence" and lack of "personal recollection" that the "guidance" included instruction concerning the assessment of specific costs is meaningless in the face of the actual Stipulation of the parties, which was based on deposition testimony. *See* Exhibit 14, Deposition of Melissa Jenkins-Phongphachone, April 20, 2022, at 56-57, 60 (based on instruction from Judicial Administration, if costs are ordered on more than one count, she is to add all the costs that CPCMS automatically generates for each offense). To dispute a fact

established in the record, the Judicial Respondents "must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial." *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. 1991). The Kehs Affidavit is too vague and indefinite to undermine the Stipulation previously made by the same parties that offer his "testimony" now.

Mr. Kehs's vague declaration also cannot support summary relief for the Judicial Respondents because the *Nanty-Glo* rule prohibits a party moving for summary judgment from resting "solely upon its own testimonial affidavits or depositions, or those of its witnesses, to establish the non-existence of genuine issue of material fact." *Wells Fargo Bank, N.A. v. Premier Hotels Grp., LLC*, 177 A.3d 248, 250 (Pa. Super. Ct. 2017) (citation omitted); *see also O'Rourke v. Pa. Dep't of Corr.*, 730 A.2d 1039, 1041 (Pa. Cmwlth. Ct. 1999) (moving party cannot rely "exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact").

In support of their new position that the Judicial Administration's guidance to the Clerk did not include instructions "to assess or not to assess specific statutory costs," the Judicial Respondents claim that their directive to the Clerk could not be interpreted to offend any statute. More, they now offer a factual gloss that is unsupported by **any** testimony: that "when it provided its guidance, the Judicial District considered the words used in their ordinary sense," and that the "ordinary sense" of the phrase "offense related" means no more than that the costs, as all criminal costs do, relate to criminal charges.

But no testimony of record—not even the self-serving and judicially estopped affidavit of Mr. Kehs—supports this new assertion about what the Judicial Administration intended when it provided instruction to the Clerk. This assertion about the Judicial Administration's intention deserves no weight or consideration, as it is not supported by any evidence. An assertion penned by counsel is not evidence.

By the Judicial Respondents' admission, the Judicial Administration gave the Clerk instruction about imposing costs when a sentencing order calls for costs on more than one count. The Judicial Administration has known that this resulted—and continues to result—in the imposition of duplicate costs in contravention of the clear language of the authorizing statutes, and the Judicial Administration has defended the practice and made no effort to alter its instruction to the Clerk. Judicial Respondents bear both legal and factual responsibility for the imposition of illegal duplicate costs. Their Application for Summary Relief should be denied.

B. The Clerk of Courts Is Not Entitled to Dismissal of Petitioners' Claims that Her Office Imposes Illegal Duplicated Costs.

The Clerk of Courts' argument for dismissal is that she "has no power to interpret statutes," must follow the instructions of the Judicial Administration, and therefore cannot be held responsible for the illegal duplicate costs her office imposes. But as the Court has previously held when rejecting this argument as a basis for sovereign immunity, the Clerk's "office is primarily responsible for the imposition and administration of court costs." *McFalls*, 2021 WL 3700604, at *12-13.

The Clerk's renewed ministerial argument ignores her office's role in assessing costs, ignores the testimony of her designated witness, and ignores the Clerk's role in

this litigation. First, it is the role of the Clerk, in the normal course, to determine which costs apply and to assess them—there is no one else in the judicial system who performs that task. *In re Admin. Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007) does not hold to the contrary. Second, despite the Clerk's protestations that it is not her Office's role to interpret cost statutes, the Clerk's designated witness stated that the Office does exactly that. Third, it does not matter if the Clerk's role is discretionary or ministerial regarding the application of *legally authorized* costs. What matters is that she has absolutely no authority, ministerial or otherwise, to impose and collect *illegal* costs, and Petitioners are entitled to judicial relief to ensure that she stops doing so, as this Court held in dismissing the Clerk's Preliminary Objections.

In short, the Clerk belongs in this litigation, both because she has actively participated in the decisions and practices that resulted in Petitioners being assessed illegal costs and because she is necessary for the provision of relief.

1. It Is the Clerk's Job to Interpret and Apply Cost Statutes, and *In re Admin. Order No. 1-MD-2003* Does Not Hold to the Contrary.

As this Court has already found and as the parties have stipulated, costs are not identified or assessed by judges in the 38th Judicial District: that function is performed by the Clerk of Courts office. Findings of Fact ¶ 13; Joint Stipulation ¶¶ 8, 25–27. In addition, it is the Clerk of Courts that collects all costs, fines, and monetary restitution from criminal defendants. Findings of Fact ¶ 12; Joint Stipulation ¶ 29.

It is, obviously, the Clerk of Courts office that must and does identify the appropriate costs to assign in a given case. There is no one else who does or could perform that function. To perform that function, the Clerk must apply cost statutes.

That is the job of the Office, and Respondent Schreiber has stipulated that the office does so. Joint Stipulation at 26.

The Clerk argues, relying upon *In re Admin. Order No. 1-MD-2003*, 936 A.2d 1 (2007), that the Clerk's ministerial role immunizes her from suit, but that case has nothing to do with whether the Clerk can be sued for violating the law, or whether she (in her official capacity) can be ordered to conform to the law. Instead, *In re Admin Order No. 1-MD-2003* merely holds that a Clerk's ministerial nature *precludes the Clerk from filing suit* to challenge a judicial order.[19] When read in context, it is clear that the Court's statements about the limits on the Clerk's role relate solely to whether the Clerk may challenge judicial orders, not whether the Clerk can or does interpret statutes in the course of performing the Clerk's duties:

> 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. *Thompson*, *supra*. **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. Ord. No. 1-MD-2003, 936 A.2d at 9 (emphasis added). The Court was addressing the Clerk's standing to challenge judicial orders in court, nothing else.

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[19] The Clerk of Berks County was ordered to "seal the entire record" of cases in which the defendant had successfully completed an Accelerated Rehabilitative Disposition ("ARD") program. The Clerk filed an action challenging the order to seal, arguing that it violated the Criminal History Record Information Act ("CHRIA"), 18 Pa.C.S. §§ 9101–9183. The Court of Common Pleas dismissed the Clerk's action, and the Commonwealth Court affirmed. *In re Admin. Ord. No. 1-MD-2003*, 936 A.2d at 4.

2. **The Record Establishes that the Clerk's Office Regularly Interprets and Applies Cost Statutes, including by Determining which Costs Are Duplicated and which Costs Are Not Duplicated in Petitioners' Cases**.

As discussed above with respect to the Judicial Respondents' arguments, our Supreme Court has made clear that a government agency cannot hide behind an asserted statutory lack of discretion when it *actually exercises* precisely the type of discretion it claims not to have. *Washington v. DOC*, 306 A.3d at 295-96 (rejecting the DOC's claim that it lacked discretion to adjust deductions from inmate accounts because "the Department retained discretion to refrain from making Act 84 deductions from inmate accounts at all if their balances do not exceed ten dollars"). The record in this case demonstrates that the Clerk of Courts office, in fact, determines which costs to assess in a given case, including which to duplicate and not duplicate.

First, the disposition clerks who assess costs through CPCMS in each criminal case do not, as a general matter, simply accept the costs that CPCMS automatically adds to the case: those clerks are trained to add or remove costs in CPCMS, according to the Clerk's understanding of which costs are appropriate to that case. Jenkins-Phongphachone Dep., April 20, 2022, at 72:14-73:1 (stating that it is "correct" that there are circumstances where the Clerk of Courts employees remove costs that are automatically added by CPCMS) (Exhibit 14).

That is also true in cases in which the sentencing order calls for costs to be imposed on more than one count. In those cases, the disposition clerk must manually deselect some costs that CPCMS automatically adds to the second count in order to

avoid duplicating costs that the Clerk of Courts has determined should only be imposed once. Jenkins-Phongphachone Dep. at 53:21-54:5. For example, the disposition clerk must manually remove the Booking Center Fee from any counts other than the lead count because CPCMS automatically adds that cost for each count on which costs are assessed, but the Clerk of Courts believes it should only be imposed once per case. *Id.* at 79:16-22. The determination whether a cost could be imposed once or more in a single case was made by a former second deputy in the Clerk of Courts, who would review cost-related statutes to determine whether they can be imposed more than once per case. *Id.* at 52:5-14. That deputy would then instruct Clerk of Courts employees on which costs are permitted to appear more than once in a single case. *Id.* at 79:10-80:4.

The same testimony directly contradicts the Clerk of Courts' claim that the Office "just follows orders" when duplicating costs. The Clerk's office does not, in fact, duplicate all "offense related" costs as instructed by the Judicial Administration. As noted, the Clerk's office has determined that the Booking Center Fee should not be assessed more than once, even if the sentencing order calls for costs on more than one count. Yet, the Booking Center Fee is one of the "offense-related" costs that CPCMS automatically adds to the second count when costs are assessed. *See* Jenkins-Phongphachone Dep. at 60 (instruction from Judicial Administration was to assess all offense-related costs that CPCMS automatically generates); Exhibit 12 at pp. 7, 14 (AOPC instruction manual depicting "offense-related" costs that CPCMS automatically adds, including the Booking Center Fee) (an enlargement of the screen shots from pages 7 and 14 of Exhibit 12 is appended hereto as Exhibit 20). Manifestly, the Clerk of Courts' office makes its own judgments about which costs to

duplicate in the Class members' cases. Both the Clerk and the Judicial Respondents participate in and are liable for the joint policy of imposing illegal costs on the Class members.

3. As this Court Has Already Held, the Clerk Is an Appropriate, even Indispensable Party to this Litigation for the Purpose of Providing Relief.

This Court rejected the argument that the ministerial nature of the Clerk's office entitles her to dismissal when it denied the Clerk's Preliminary Objections. As the Court correctly recognized:

> Schreiber's argument that the ministerial nature of her role as Clerk of Courts precludes Petitioners from obtaining their desired relief against her is without merit. Contrary to Schreiber's assertions, the declaratory judgments that Petitioners seek would not, in and of themselves, place any legal duties upon her.
>
> …
>
> As for an injunction, it "is a court order that prohibits or commands virtually any type of action." *Woodward Twp. v. Zerbe*, 6 A.3d 651, 658 (Pa. Cmwlth. 2010). Thus, Schreiber can certainly be enjoined from acting in ways that are unlawful or compelled via injunction to take certain corrective actions. … . Even so, given the nature of Petitioners' allegations, it is nevertheless prudent to let their claims against Schreiber move forward because her office is primarily responsible for the imposition and administration of court costs.

McFalls, 2021 WL 3700604, at *12-13. Petitioners seek a declaration that the imposition of duplicate costs in a single criminal case is illegal, as well as injunctive relief, including the cancellation of the costs that have been illegally imposed on Petitioners and the Class members. Any such relief would require an order that binds the Clerk of Courts.

For that reason, even apart from the Clerk's clear participation in the imposition of the illegal costs, the Clerk must remain a party to this case.

The Declaratory Judgment Act[20] requires the retention of parties whose interests are at issue, even if they themselves are not accused of wrongdoing. *See Cnty. Comm'rs Ass'n of Pennsylvania v. Dinges*, 935 A.2d 926, 932 (Pa. Cmwlth. Ct. 2007) (refusing to dismiss county District Attorneys from action seeking to determine correct statutory salary for District Attorneys). The Declaratory Judgment Act also requires the presence of a party where full relief cannot be granted without action from that party. *See, e.g., Paterra v. Charleroi Area Sch. Dist.,* 349 A.2d 813, 815 (1975) (dismissing case for failure to join individual school board members because "a decree enjoining the named [School District] could not be effective to restrain members of the School Board not parties to the action.").

The core question here is "Does the Clerk of Courts impose and collect costs that are not authorized by statute?" If the Clerk is imposing and collecting illegal costs that are not statutorily authorized, then she is the proper party against whom declaratory and injunctive relief should issue "because her office is primarily responsible for the imposition and administration of court costs."[21] And the

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[20] "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding … ." 42 Pa.C.S. § 7540(a).

[21] The common law of agency provides an apt analogy: "It has long been a basic tenet of agency law that an agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal." *Cosmas v. Bloomingdales Bros.,* 660 A.2d 83, 88 (Pa. 1995) (cleaned up).

Commonwealth Court has specifically held that a clerk of court is a proper party to a suit where costs were imposed outside the scope of their authority. *See Spotz v. Com.*, 972 A.2d 125, 134 (Pa. Cmwlth. Ct. 2009) (denying demurrer based on clerk's ministerial function where "there existed no order expressly imposing costs").[22]

[22] As a matter of course, ministerial offices such as the Clerk of Courts are always subject to mandamus actions when they act outside the scope of their authority by failing to take a legally mandated action. *Volunteer Firemen's Relief Ass'n of City of Reading v. Minehart*, 203 A.2d 476, 479 (Pa. 1964) ("Clearly, mandamus lies to compel the performance of a purely ministerial duty."). Here, where the Clerk's *ultra vires* actions taken outside the scope of her authority must be restrained, the requested relief is declaratory and injunctive.

IV. CONCLUSION

Wherefore, Petitioners respectfully request that this Court:

(1) deny Respondents' Applications for Summary Relief;

(2) grant Petitioners' Application for Summary Relief;

(3) issue a declaratory judgment that Respondents have imposed duplicated costs in Petitioners' criminal cases in a manner that is *ultra vires* and void, that Respondents have violated Petitioners' right to equal protection under the U.S. and Pennsylvania constitutions by imposing duplicated costs in their criminal cases without a rational basis, and that Respondents have violated Petitioners' right to procedural due process under the U.S. and Pennsylvania constitutions by failing to provide notice of Respondents of the costs they have imposed; and

(4) schedule briefing and, if necessary, a hearing on the propriety of further relief for Petitioners and the Class.

A revised proposed Order is submitted herewith.

Respectfully submitted,

Date: May 29, 2024.

/s/Mary Catherine Roper

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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
Mary Catherine Roper

EXHIBIT 17

Received 1/5/2021 10:02:42 AM Commonwealth Court of Pennsylvania

Filed 1/5/2021 10:02:00 AM Commonwealth Court of Pennsylvania
4 MD 2021

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

McFalls, Amy, et al., Petitioner v. 38th Judicial District, et al.	:	New Case

PROOF OF SERVICE

I hereby certify that this 5th day of January, 2021, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served:	38th Judicial District
Service Method:	Personal Service
Third Party:	
Service Date:	1/5/2021
Address:	2 Easy Airy Street PO Box 311 Norristown, PA 19404
Phone:	--
Representing:	Respondent 38th Judicial District

Served:	Attorney General
Service Method:	eService
Service Date:	1/5/2021
Address:	Strawberry Square 16th Floor Harrisburg, PA 17120
Phone:	(71-7) -787-3391

Served:	Lori Schreiber
Service Method:	Personal Service
Third Party:	
Service Date:	1/5/2021
Address:	2 East Airy Street PO Box 311 Norristown, PA 19404
Phone:	--
Representing:	Respondent Lori Schreiber

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PROOF OF SERVICE

(Continued)

Served:	Michael Kehs
Service Method:	Personal Service
Third Party:	
Service Date:	1/5/2021
Address:	2 East Airy Street PO Box 311 Norristown, PA 19404
Phone:	--
Representing:	Respondent Michael Kehs

Served:	Thomas DelRicci
Service Method:	Personal Service
Third Party:	
Service Date:	1/5/2021
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Phone:	--
Representing:	Respondent Thomas DelRicci

/s/ John James Grogan

(Signature of Person Serving)

Person Serving:	Grogan, John James
Attorney Registration No:	072443
Law Firm:	Langer Grogan & Diver, P.C.
Address:	Langer Grogan & Diver Pc 1717 Arch St Ste 4020 Philadelphia, PA 191032846
Representing:	Petitioner Crunetti, Jason Petitioner Esposito, Vincent Petitioner Jackson, Gregory Petitioner Lacy, Brenda Petitioner McFalls, Amy

EXHIBIT 18

In the Commonwealth Court of Pennsylvania
----------x
Amy McFalls, et al.,
Petitioners
vs No. 4 M.D. 2021
Class Action
38th Judicial District, Original Jurisdiction
Hon. Thomas M. Delricci,
President Judge
(in his official capacity),
Michael R. Kehs, Esquire,
Court Administrator
(in his official capacity) and
Lori Schreiber, Clerk of Courts
(in her official capacity),
Respondents
----------x

MARCH 31, 2022
VIDEO DEPOSITION OF: ALI HASAPES called for oral examination by counsel for the Petitioners, pursuant to Notice at One Montgomery Plaza, Conference Room 1, 18th Floor, Norristown, PA before Hillary Hazlett Walsh of KLW Court Reporters & Litigation Support, a Notary Public in and for the Commonwealth of Pennsylvania, beginning at 12:36 p.m., when were present on behalf of the respective parties.

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ALSO PRESENT:

Mitch Berger, Video Technician

INDEX

EXAMINATION

DEPOSITION OF	PAGE
Ali Hasapes	
By Ms. Roper	5

EXHIBITS

EXHIBIT NO.	MARKED
1 - Amended Deposition Notice	19
2 - Court Clerks Manual	25
3 - AOPC Training Manual on Assessments	35
4 - AOPC Training Manual on Sentencing	35
5 - AOPC Training Manual on Dispositions	35
7 - Blank Montgomery County Sentencing Sheet	38
8 - Blank AOPC Sentencing Worksheet	38
12 - Listing of Court Costs	62
13 - 5/29/2018 ACLU Letter	92
14 - Sentencing Sheet (with pen marks)	44

STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification, and filing are waived and that all objections except as to the form of the question are reserved to the time of the trial.

VIDEO TECHNICIAN: We are now on the record. My name is Mitch Berger, and I'm the videographer retained by On the Record.

This is a video deposition for the Commonwealth Court of Pennsylvania, Case No. 4 MD 2021.

Today is March 31st, 2022. The time is approximately 12:36 p.m.

This deposition is being taken at One Montgomery Plaza in Norristown, Pennsylvania in the matter of Amy McFalls, et al, versus 38th Judicial District, et al.

The deponent is Ali Hasapes. All counsel will be noted on the stenographic record.

The court reporter is Hillary Walsh from Kaplan, Leaman & Wolfe and she will now swear in the witness.

THE REPORTER: Would you please raise

Page 25

12:56, please proceed.
BY MS. ROPER:
Q Thank you. I'm going to show you something we have marked as Exhibit 2.
A Um-hum.
MR. DALEY: Thanks.
MS. ROPER: Sure.
(Exhibit No. 2 was marked for identification.)
BY MS. ROPER:
Q Miss Hasapes, we asked counsel for the Judicial District for training materials that were used to train court clerks and they produced to us the documents you see here.
We put them in a binder. We put the tabs on there. We were trying to duplicate what we thought those materials came from; but if it is different from what you are familiar with, please don't hesitate to tell me that.
A It looks very similar.
Q Okay.
A Very similar.
Q We did well then.
A Correct.
Q Thank you.

Page 26

So the first question is, do you recognize other -- perhaps then the type of binder it is in what I have handed you?
A I do.
Q And what is that?
A It was the Court Clerk Manual for Disposing of Sentencing -- and Sentencing Cases in CPCMS.
Q Okay. And am I right that this is a manual created in -- created by and for people in Montgomery County?
A Correct.
Q All right. This did not come from AOPC?
A I was not involved with the creating of this book, so I can't say one way or another. I don't believe it was.
Q Okay.
A I believe it was created by my previous department head and Meg McMullen.
Q That was exactly my question.
Can you remind me of the name of your previous department head?
A Actually, this was -- a previous department head -- there is -- because the last guy Matt Pio became department head during

Page 27

COVID.
Q Okay.
A This was a pre-COVID thing. So her name is Suzanne Hayes.
Q And Miss McMullen?
A Correct.
Q Do you know what Miss Hayes is doing now?
A She is now a court clerk.
Q Okay.
A She was -- she was the supervisor. Now, she is going back to -- back to being just a court clerk.
Q Okay. Do you know why she went back to being just a court clerk?
A I believe she was asked to step down.
Q Okay. I don't need further details.
A I don't know them. So --
Q Who is responsible for keeping this manual updated?
A I don't believe it has been updated since it was first created. I guess technically speaking, it would be my possibility to make sure that the information in here is correct.
I would rely on Meg McMullen to give me

Page 28

any updates in CPCMS because she is our -- kind of our go-to for that.
But right now, she is -- she is kind of the one that would be my -- my go-to for any updates.
Q Okay.
A So technically speaking, it is my responsibility; but I would go to Meg for the information and rely on her to tell me if there were updates.
Q So is it fair to say it would be your call as to whether something in here got changed?
A Yes.
Q All right. But Meg could suggest to you and you would trust --
A Correct.
Q Okay. What is the -- what is this manual used for?
A So before COVID, we started to have the court clerks enter into CPCMS the dispositions. They wanted -- Andrea Grace and -- I'm going to blank on her name -- Denise Vicario, who was the old Andrea Grace. There has been some movement in positions.

Page 29

They really wanted to start having the dispositions entered into CPCMS live. So they put this book together as a training manual to have the court clerks learn how to do it.

There were a hand -- the way that it ended up working is there were a handful of court clerks that were doing it, and they would sit in a jury room behind the very active courtrooms and they would enter and then COVID hit and that all kind of went away because we were not working in the courtroom.

We were doing a lot of things from home and back and forth, and we have not gotten fully back to this.

I do have a court clerk or two that can do it in case Meg is on vacation or whatever; but for the most part right now, Meg is doing it all. So this was -- this was a step they wanted to take that we then went backwards with.

Q Okay. Let me see if I understand who is doing what in these different time periods.

When you say that you wanted the disposition information entered live, what do you -- you don't mean sitting in the courtroom during the sentencing hearing, do you?

Page 30

A They actually wanted to try and do that.

Q Okay.

A And ironically enough, I was sent with Meg McMullen to Lancaster because they were quote/unquote doing it live.

When we got there, we realized that it wasn't actually sitting in the courtroom putting it into CPCMS the way they thought.

So that is where they came up with the system of having -- having the disposition sheet filled out in the courtroom like usual and then have that information given to the court clerk in the back to -- to enter. So live doesn't mean as the hearing is happening. Live means within an hour or two.

Q Okay. When was your trip to Lancaster?

A 2018, I would say. Maybe early 2019.

Q So the intention was that the court clerk sitting in the courtroom would not only capture all of the information that happened during the sentencing hearing but also get all of that input into CP -- CPCMS and it turned out that that really wasn't going to happen all in one step?

A Correct.

Page 31

Q All right. So what happens instead?

A So now, we are taking the information, putting it onto the disposition sheet, scanning and e-mailing it to Meg McMullen, who was then entering all of the information into CPCMS.

Q Okay. And before COVID happened, who was doing this entering?

A Meg McMullen as well as a handful -- one woman's name is Lisa Marie Morris. She has been out on, I believe, workman's comp since August of 2019, which she was involved before that.

We had a couple -- a handful of clerks. I couldn't tell you their names off the top of my head. I would have to actually think about because it has been a long time. There were a handful that were kind of designated as that -- that -- that person.

Q So when you tell me that there is a handful of clerks who were doing this entry immediately after hearings as close to live as you could get, that means it wasn't that the clerk who sat in the courtroom then ran back and did the entry?

A No.

Q Okay.

Page 32

A Under certain -- it depends on how -- let me correct. It depends on how busy the courtroom was.

There were times if your courtroom -- if you had one matter, let's just say you had a trial that turned into a guilty plea, you had the time to do that. It was when the courtrooms were busier that they had other people do it.

Q Okay. Are you hoping to get back to the practice of having a corps of clerks who are doing this entry very quickly after the hearings?

A It has been discussed, but it is not -- we are not near it at the moment. There are other steps we would like to take first to kind of get everyone back into the habit of using CPCMS.

Two years is a long time not to use it. So a lot of the Court clerks need a refresher but it -- it is in -- it has been discussed. It is not in the immediate future.

Q Okay. What training do court clerks get for what they are doing in the -- the courtroom if -- if it doesn't come from this manual, which is about CPCMS?

Page 37

Q And if you saw someone doing something out of the ordinary, you would ask about that?
A I would.
Q And unless there was good reason for it, you would tell them to do the thing that -- that everybody else is doing?
A I would.
Q Okay. And I understand that you are fairly new in this position but what -- what sort of quality control techniques do you have? How -- how do you supervise clerks after they are trained?
A I check in with the clerks that trained them to kind of get an understanding of how they are grasping things and, you know, then when they move away from that senior clerk, then they go work behind another clerk as what is called a second seat clerk.
So the first seat clerk is assigned to one judge and then they have a second seat clerk in those high-traffic courtrooms.
I always touch base with that clerk, the first seat clerk to see how that second seat clerk is doing.
If they notice a consistent mistake, if

Page 38

they thought that that person needed additional training and I rely on the first seat clerks who are all mostly senior clerks to kind of give me feedback.
Q Okay. And how about the process of court clerks entering information into CPCMS? What -- how did you make sure that that was being done properly -- or I'm sorry, this was before you were the supervisor?
A Correct.
Q But you were one of those clerks. How did -- how was your work checked?
A I don't know.
Q Okay.
A Because I wasn't -- I wasn't in that position. So I honestly don't know how they checked it.
Q Okay.
MS. ROPER: Could I have 7? Sorry. I should have asked sooner. And I'll want 8 in a few minutes.
(Exhibit No. 7 and 8 was marked for identification.)
BY MS. ROPER:
Q I'm handing you what we have marked as

Page 39

Exhibit 7.
Can you tell me what that is?
A This is what we refer to as the green sheet because it is physically green. It is a disposition sheet.
Q Okay. I have seen references in the manual to a blue sheet. Is this a multi-part form?
A No. The blue sheet is for violations.
Q Okay.
A So if someone violates a probation or parole, it is very similar. It is just directed -- directed more towards the violations.
Q Now, I see at the bottom of this form it says revised July 2020. Are you aware of the process that led to this being revised?
A The judges periodically will review a green sheet kind of based upon the needs of it and if there is new law or if there is new -- different things, they -- they will change it to whatever they feel needs to be addressed.
Q Okay. Do you know who initiated the process of -- getting -- that resulted in this being revised in July of 2020?

Page 40

A I could guess, but I couldn't give you a specific answer.
Q What is your guess?
A My guess would be Judge O'Neill and Judge Branca because Judge Branca was the administrative criminal judge at the time and Judge O'Neill was the administrative criminal judge before Judge Branca and was still very hands on with a lot of different things. So I would -- I -- I believe that is who it was. I'm not 100 percent certain.
Q Okay. And you don't have any specific information about this change?
A No.
Q Okay. I'm going to show you what we marked as Exhibit 8, and I will represent to you that this is a disposition sheet that prints out from CPCMS.
A Okay.
Q Do you know of any reason why Montgomery County doesn't use this disposition sheet instead?
A I do not. I know that when we enter into CPCMS, the disposition sheet that is created does not look like this.

EXHIBIT 19

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY McFALLS, et al., : NO. 4 M.D. 2021
:
Petitioners, :
:
vs. :
:
38th JUDICIAL DISTRICT, HON. :
THOMAS M. DELRICCI, President :
Judge (in his official :
capacity), MICHAEL R. KEHS, :
Esq. Court Administrator (in :
his official capacity), and :
LORI SCHREIBER, Clerk of Courts :
(in her official capacity), :
:
Respondents. :

Wednesday, April 20, 2022

Oral deposition of MEG MCMULLEN, taken pursuant to notice, held at One Montgomery Plaza, 4th Floor, Norristown, Pennsylvania, commencing at 9:42 a.m., before Nicolle J. Tornetta, Registered Professional Reporter and Notary Public there being present.

KAPLAN, LEAMAN AND WOLFE
Registered Professional Reporters
230 South Broad Street, Suite 1303
Philadelphia, PA 19102
(215) 922-7112

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Clerk of Courts

INDEX

WITNESS
MEG MCMULLEN
(Witness sworn.)

EXAMINATION BY: PAGE
Mr. Trainer 5

EXHIBITS

NUMBER	DESCRIPTION	PAGE
15	Amended Notice to take Oral Deposition	9
16	Trial/Plea/Sentence, Charge(s) and Bill(s) of Information, RE: Amy McFalls	33
17	Blank Trial/Plea/Sentence, Charge(s) and Counts	46
18	Screenshot of Conditions Tab	65

DEPOSITION SUPPORT INDEX

Direction To Witness Not To Answer
Page Line
(None)

Request For Production Of Documents
Page Line
(None)

Stipulations
Page Line
5 2

Questions Marked
Page Line
(None)

Page 5

- - -

(It is agreed by and among counsel that reading, signing, sealing, filing, and certification are hereby waived and all objections, except as to the form of the questions, are reserved until the time of trial.)

- - -

MEG MCMULLEN, having been duly sworn, was examined and testified as follows:

- - -

EXAMINATION

- - -

BY MR. TRAINER:

Q. Good morning, Ms. McMullen. I'm going to start with a few housekeeping items that are common to most depositions. The first question we always ask is, have you ever been deposed before?

A. Yes.

Q. And how many times previously?

A. Once.

Q. Once. Were you testifying in your official capacity or was it a personal matter?

A. No, it was not. It was a personal matter.

Q. Okay. And what was the nature of your

Page 6

deposition?

A. Divorce and child custody.

Q. Okay. Now we'll discuss how a deposition typically operates, some of which you might know already. I'll ask the question, stop, and then you'll answer the question. And during that question and answer, to make sure that the resulting transcript reflects what was said and to make the court reporter's job as easy as possible, it's important that we each let the other finish before beginning to speak ourselves. Is that okay?

A. Yes.

Q. Okay. Relatedly after we finish today, the court reporter will prepare a written transcript. Do you understand that?

A. Yes.

Q. Okay. And it's that written transcript and not the Zoom transcript or anything else, that will be the record of what was said.

A. I understand.

Q. Okay. And the reason I bring that up is because the court reporter only can record audible answers, so please use yes or no instead of head nods --

Page 7

A. Okay.

Q. -- or things like that. Now, after I ask you a question, but before you answer it, your lawyer may object. That's a common component of depositions as your lawyer may have told you. But after she objects, unless she's instructed you to not answer a question, you still must answer the question. Does that make sense?

A. Okay.

Q. Okay. I will also endeavor throughout the deposition to ask questions that are simple and straightforward. I'm sure that at some point, I will fail at that. If I ask you a question that's not clear or if you otherwise don't understand what I have asked, please let me know, and I will repeat the question or I will rephrase the question. Okay?

A. I will.

Q. Okay. Thank you. Similarly, it's perfectly fine to answer a question with I don't know. If you, in fact, don't know, we would prefer that you would answer I don't know.

A. Okay.

Q. Okay. We can take a break any time you need it, so if you would like to take a break, just ask.

Page 8

And then we'll probably schedule one or two breaks --

A. Okay.

Q. -- before lunchtime. The only caveat is that if I've asked a question that you have not yet to answer, you will answer that question first and then we can take a break after you've answered that question. Okay?

A. Okay.

Q. Finally, is there any reason, like illness, a medication you are taking, lack of sleep, or anything else that could affect your ability to understand or answer the questions that I will ask today?

A. No.

Q. Okay. And is it correct that we have, to the best of our ability, provided an accommodation through Zoom to allow you to further understand the questions that I've asked?

A. Yes.

Q. Okay. Thank you. So let me begin by handing you the amended notice to this deposition that we sent your lawyers on Monday, which I have marked as or will be marked as Exhibit 14 [sic].

A. Can I have a moment to read this?

Q. Yes, please take a moment to read that.

Page 73

A. I have no idea.
Q. You also discussed previously while the sentencing sheet was being revised that you knew that other counties did things differently; is that -- did you say that?
A. No. I mean, to my knowledge, everyone was aware that other counties -- every county does things differently from the next county.
Q. Right. And when you -- when the sentencing sheet was being revised, did you or anybody else that you know of look to what other counties did with their sentencing sheets or CPCMS to inform how you would revise yours?
A. Not to my knowledge.
Q. Okay. You also, I believe, mentioned that you know that other counties can access their sentencing sheet through CPCMS; is that right?
A. That's correct.
Q. Okay. How do you know that?
A. I visited some of the other counties.
Q. Do you remember which counties you visited?
A. Lancaster, for one.
Q. Do you remember when you visited Lancaster?
A. I do not. I mean, prior to the pandemic.

Page 74

Q. And is it fair to say some time after you came to the 38th Judicial District?
A. I don't understand your question. It's not...
Q. Did you visit Lancaster after you came to court administration?
A. Yes.
Q. Okay. And you visited Lancaster before July 2020?
A. Yes.
Q. Okay. So some time in between. Did anybody else visit Lancaster with you?
A. I don't remember.
Q. Okay. Do you remember if you were by yourself or not?
A. Ali might have been there.
Q. Okay.
A. I don't remember.
Q. It was a long time ago.
A. If she was, I met with different people than she did while we were there.
Q. And did you visit other counties?
A. Philadelphia.
Q. And any others?
A. No, they're the only two.

Page 75

Q. And after you visited Lancaster and Philadelphia, did you brief any of your colleagues or superiors on what those counties do and compared to what Montgomery County does?
A. Yes.
Q. And to the extent you can remember, what were those differences?
A. Philadelphia -- I can't even. I mean, it's too entailed. It's totally different. Lancaster, they don't have the volume of cases we do, so they're able to do it a different way. They do not use sheets; everything is put directly into CPCMS.
Q. Okay. And in Lancaster, after information is put directly into CPCMS, can court clerks in Lancaster print out sentencing sheets?
A. I do not recall how they do that. I don't know if they -- the judge signed or they use electronic signatures. I do not know.
Q. When you returned from your visit to Lancaster, did you recommend that Montgomery County adopt a similar practice?
A. I don't think so, no.
MR. TRAINER: So why don't we take just another quick ten-minute break and then I think we'll

Page 76

be able to wrap up pretty shortly thereafter. Is that okay?
THE WITNESS: Okay.
MS. FEIGENBAUM: That's fine with me.
- - -
(Whereupon, a brief recess was taken at 12:04 p.m., which the deposition continued at 12:10 p.m.)
- - -
BY MR. TRAINER:
Q. Okay. Thank you, again, Ms. McMullen, for your patience. I have a few more questions, but I promise there're only a few. We today talked a lot about how you might be able to detect errors on a sentencing sheet. After you enter the information you enter into CPCMS, does anybody then go and check what you entered into CPCMS to make sure it is correct or accurate?
A. Clerk of Courts.
Q. And after you enter the information you enter into CPCMS, do you notify the judge that information has been entered in a case that he's presiding over?
A. No.
Q. To the best of your knowledge, does the judge

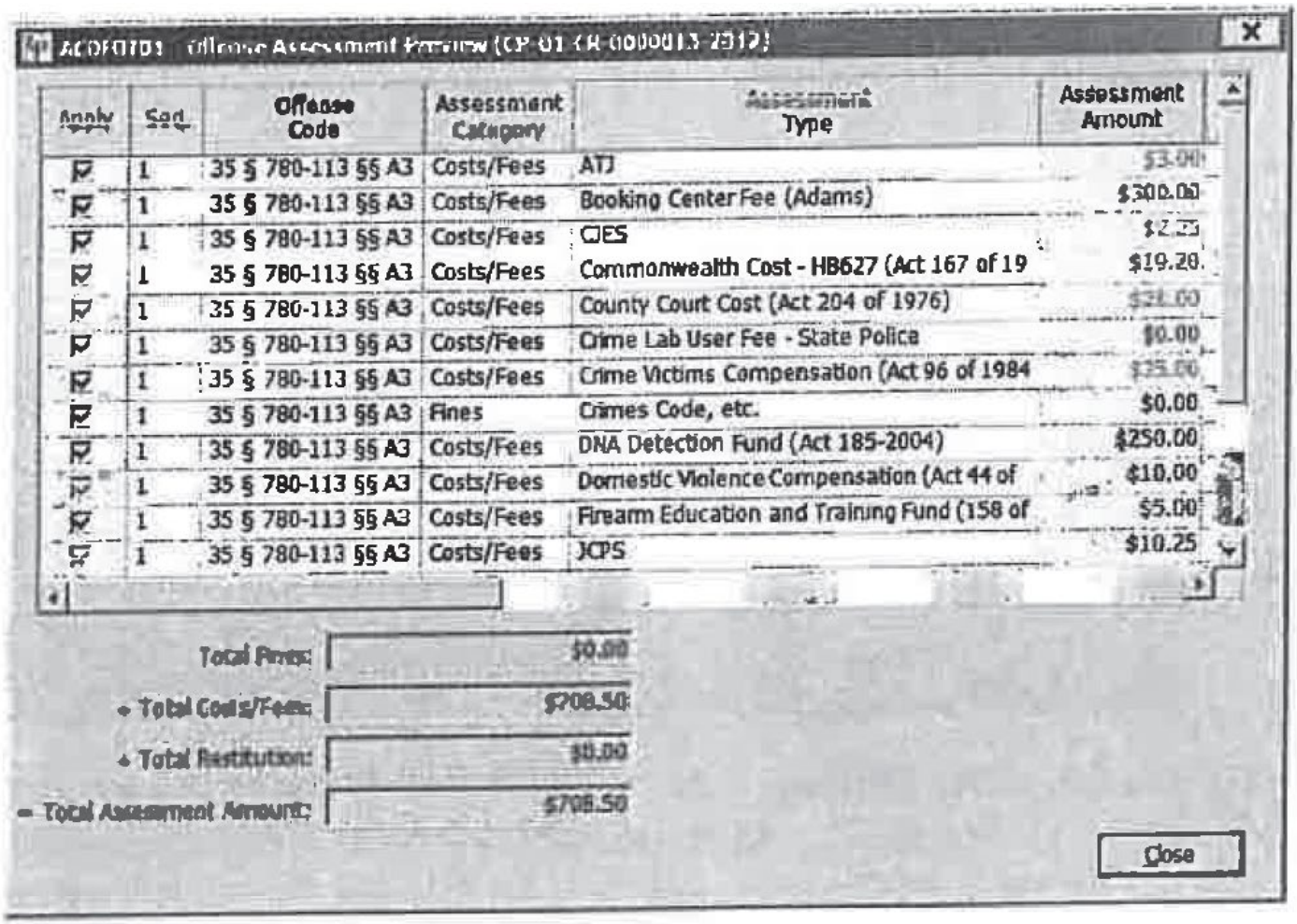
EXHIBIT 20

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ASSESSMENTS

Assessments are the financial penalties levied on a case or the fees charged to persons or organizations for services performed by the court that may not be directly related to a case. It is important to know when it's appropriate to add these assessments and how to properly create and manage them.

Last Updated: 7/5/2013



ACOF07D1 Offense Assessment Preview (CP-01-CR-0000013-2017)

Apply	Seq	Offense Code	Assessment Category	Assessment Type	Assessment Amount
☑	1	35 § 780-113 §§ A3	Costs/Fees	ATJ	$3.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	Booking Center Fee (Adams)	$300.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	CJES	$2.25
☑	1	35 § 780-113 §§ A3	Costs/Fees	Commonwealth Cost - HB627 (Act 167 of 19	$19.28
☑	1	35 § 780-113 §§ A3	Costs/Fees	County Court Cost (Act 204 of 1976)	$35.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	Crime Lab User Fee - State Police	$0.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	Crime Victims Compensation (Act 96 of 1984	$25.00
☑	1	35 § 780-113 §§ A3	Fines	Crimes Code, etc.	$0.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	DNA Detection Fund (Act 185-2004)	$250.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	Domestic Violence Compensation (Act 44 of	$10.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	Firearm Education and Training Fund (158 of	$5.00
☑	1	35 § 780-113 §§ A3	Costs/Fees	JCPS	$10.25

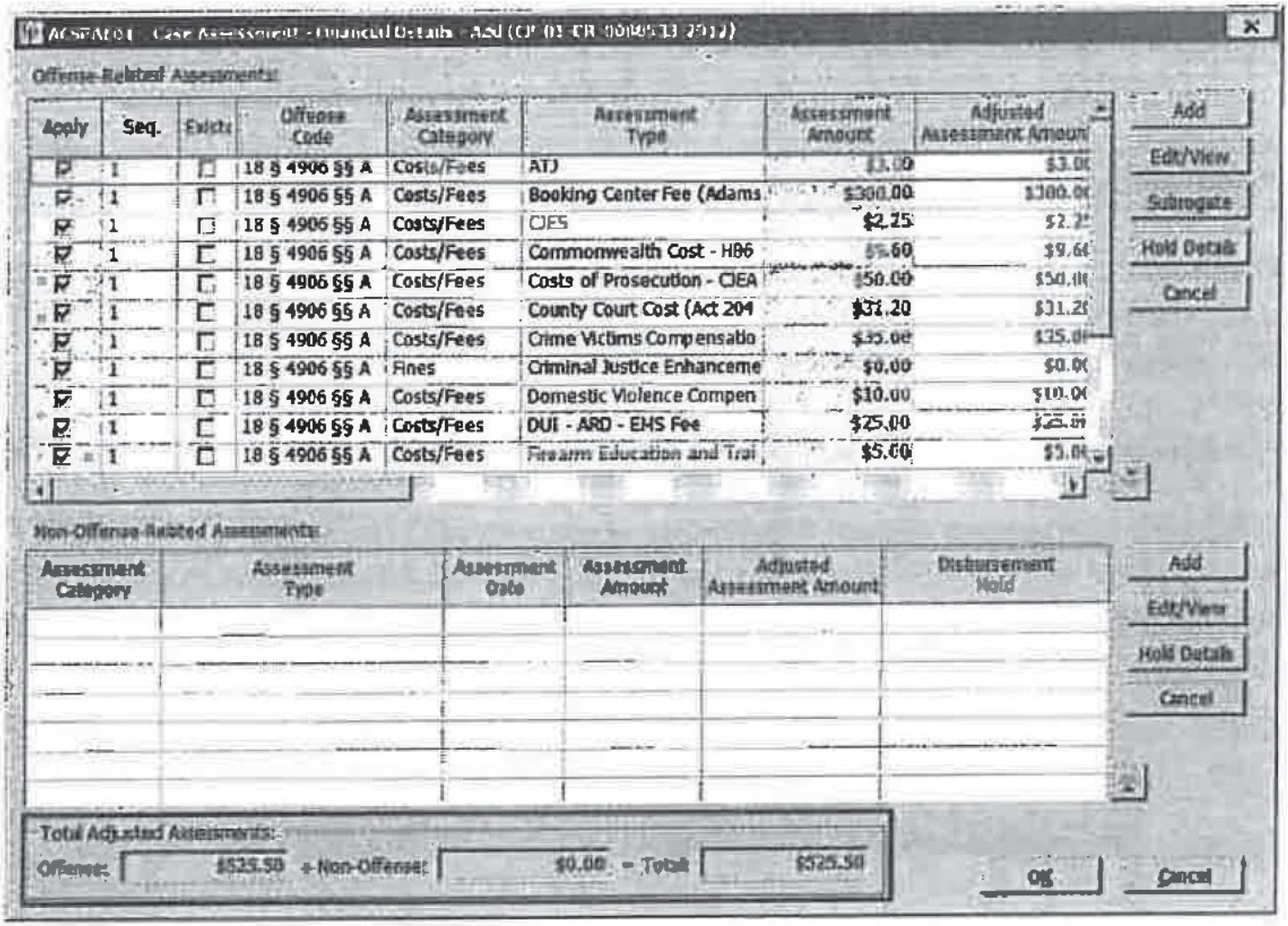
Total Fines: $0.00

+ Total Costs/Fees: $708.50

+ Total Restitution: $0.00

= Total Assessment Amount: $708.50

Close



Offense Related Assessments:

Apply	Seq.	Exists	Offense Code	Assessment Category	Assessment Type	Assessment Amount	Adjusted Assessment Amount
☑	1	☐	18 § 4906 §§ A	Costs/Fees	ATJ	$3.00	$3.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Booking Center Fee (Adams	$300.00	$300.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	CJES	$2.25	$2.25
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Commonwealth Cost - HB6	$9.60	$9.60
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Costs of Prosecution - CJEA	$50.00	$50.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	County Court Cost (Act 204	$31.20	$31.20
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Crime Victims Compensatio	$35.00	$35.00
☑	1	☐	18 § 4906 §§ A	Fines	Criminal Justice Enhanceme	$0.00	$0.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Domestic Violence Compen	$10.00	$10.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	DUI - ARD - EMS Fee	$25.00	$25.00
☑	1	☐	18 § 4906 §§ A	Costs/Fees	Firearm Education and Trai	$5.00	$5.00

Add | Edit/View | Subrogate | Hold Details | Cancel

Non-Offense Related Assessments:

Assessment Category	Assessment Type	Assessment Date	Assessment Amount	Adjusted Assessment Amount	Disbursement Hold

Add | Edit/View | Hold Details | Cancel

Total Adjusted Assessments:

Offense: $525.50 + Non-Offense: $0.00 = Total: $525.50

OK | Cancel

EXHIBIT 21

Proposed list of costs that may not be duplicated in a single criminal case.

Clerk of Courts Processing Fee (COC Processing Fee Misd/Fel), 42 P.S. § 21061

Crime Lab User Fee (County Lab Fees), 42 Pa.C.S. § 1725.3(a)

Booking Center Fee, 42 Pa.C.S. § 1725.5

DNA Detection Fund, 44 Pa.C.S. § 2322

Offender Supervision Program (OSP), 18 P.S. § 11.1102

CAT/MCARE/General Fund, 75 Pa.C.S. § 6506(a)(1)

Criminal Justice Enhancement Account (CJEA), 42 Pa.C.S. § 3575(b)

County Court Cost, 42 Pa.C.S. § 1725.1(b)

State Court Cost, 42 Pa.C.S. § 1725.1(b)

Automation Fee, 42 Pa.C.S. § 1725.4(b)

Court Child Care, 42 Pa.C.S. § 3721(c)(2)(iii)

Judicial Computer Project, 42 Pa.C.S. § 3733(a.1)(1)(iii)

Access to Justice (ATJ), 42 Pa.C.S. § 3733.1(a)(3)

Criminal Justice Enhancement Surcharge (CJES), 72 P.S. § 1795.1-E(c)(3)(ii))

Judicial Computer Program Surcharge (JCPS), 72 P.S. § 1795.1- E(c)(1)(iv) and (d)

Office of Attorney General Judicial Computer Project (OAG-JCP), 72 P.S. § 1795.1- E(c)(3)(iii)

Crime Victims Compensation, 18 P.S. § 11.1101(a)

Victim Witness Service, 18 P.S. § 11.1101(b)(2) (repealed)

Crime Victim Compensation/Victim Witness Service Variable Amount, 18 P.S. § 11.1101(a)

Domestic Violence Compensation, 71 P.S. § 611.13(b)

Firearms and Education Training Fund, 61 Pa.C.S. § 6308(b)(1)

Substance Abuse Education, 18 Pa.C.S. § 7508.1

Commonwealth Cost, 42 Pa.C.S. § 3571(c)(2)

Emergency Medical Services,75 Pa.C.S. § 3121

PA Transportation Trust Surcharge,75 Pa.C.S. § 6506(a)(2)-(7)