

**DELAWARE COUNTY SOLICITOR’S OFFICE**

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**Attorney for Respondents**

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**K.B.**

**Petitioner**

**v.**

**DELAWARE COUNTY OFFICE OF  
JUDICIAL SUPPORT, and MARY J.  
WALK, in her official capacity as  
Director of the Delaware County Office  
of Judicial Support**

**Respondents**

**IN THE COMMONWEALTH  
COURT OF PENNSYLVANIA**  
  
**Civil Action No. 446 MD 2023**

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**SUR-REPLY IN SUPPORT OF RESPONDENTS’ OPPOSITION TO  
PETITIONER’S APPLICATION FOR SUMMARY RELIEF IN THE FORM  
OF [A MOTION FOR] JUDGMENT ON THE PLEADINGS**

## ARGUMENT

### I. If the Court finds that Respondents Violated CHRIA, then a Genuine Issue of Material Fact Exists as to Whether Respondents' Actions were Willful.

For Respondents to have willfully violated CHRIA, their actions must have been intentionally designed and without justifiable excuse. Com. ex rel. Wright v. Hendrick, 312 A.2d 402, 404 (Pa. 1973). In this case, Petitioner argues that Respondents willfully violated CHRIA because Respondents continued to follow their policy in this matter despite President Judge Cartisano's December 5, 2022, letter in a separate matter (the "December 5 Letter"). See Petition Ex. H. However, prior to sending the December 5 Letter, President Judge Cartisano was sent a November 15, 2022, joint letter from the American Civil Liberties Union of Pennsylvania and Legal Aid of Southeastern Pennsylvania which discussed Respondent OJS' policy. See Petition Ex. G. Yet, the subsequent December 5 Letter makes no reference to Respondent OJS' policy, does not address costs and fees, and only directs Respondent Walk to follow the expungement order and process the expungement in the separate matter. See Petition Ex. H.

In this case, Respondents pleaded that:

- Respondent Walk interpreted the December 5 Letter to mean that she was to deviate from Respondent OJS' policy and process the expungement in the **separate matter only**. Answer ¶ 48 (emphasis added).
- The December 5 Letter did not make Respondents aware that they must comply with court orders to expunge, because the December 5 Letter did not

address the question of whether costs and fees should be expunged despite the trial court Judge Order's being silent on that issue. Petition ¶ 49; Answer ¶ 49.

- Due to Respondent OJS' policy that was in place prior to Respondent Walk's employment as the Director of OJS, and the AOPC mandated Case Management System's requirement to indicate whether court costs and fees are waived, Respondent Walk reasonably believed that Petitioner's outstanding court costs and fees were required to be paid prior to processing his expungement. New Matter ¶ 122.

Furthermore, there is nothing in the record to indicate that Respondents were ever instructed to change Respondent OJS' policy by President Judge Cartisano or anyone else.

In addition, Respondents reasonably believed that they were not authorized to waive Petitioner's costs without express authority because the Pardon did not remit the costs, the Expungement Order did not waive the costs, and CHRIA Section 9122 does not authorize the waiver of the costs.<sup>1</sup> Therefore, if the Court finds that Respondents violated CHRIA, then a genuine issue of material fact still exists as to whether they willfully violated CHRIA, since Respondents dispute that the December 5 Letter put them on notice to process the expungement in this matter,

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<sup>1</sup> Petitioner argues that his costs no longer existed following his Pardon by relying on Com. v. C.S., 534 A.2d 1053 (Pa. 1987) and Com. v. Nicely, 638 A.2d 213 (Pa. 1994). Com. v. C.S. sets forth that a pardon "blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense" and that "[a] pardon without expungement is not a pardon." Com. v. C.S., 534 A.2d at 1054. However, Com. v. C.S. does not address what happens to costs or fees following a pardon. The only reference in Com. v. C.S. to any kind of costs or fees is with respect to the Governor's power to remit fines, which is a separate power than the Governor's power to grant pardons Id. Likewise, Com. v. Nicely (setting forth that costs are incident to a judgment) also does not address costs or fees in the context of a pardon. Com. v. Nicely, 638 A.2d at 217.

and Respondents reasonably believed that they were not authorized to process the expungement without an express waiver of fees.

## **II. Respondent Walk is Entitled to Immunity.**

With respect to official immunity under 42 Pa. Cons. Stat. Ann. § 8546, Respondents incorporate their arguments above as to whether Respondent Walk was authorized or required by law, or in good faith reasonably believed that Petitioner’s costs were required to be paid prior to processing his expungement. Notwithstanding whether Respondent Walk is entitled to official immunity, Respondent Walk is entitled to the defense of sovereign immunity under 1 Pa. Cons. Stat. Ann. § 2310 despite Petitioner’s waiver argument, because “[t]he sovereign immunity of the Commonwealth cannot be waived by an act of its agent. It can only be waived by a Specific enactment of the legislature.” Hoffner v. James D. Morrissey, Inc., 389 A.2d 702, 704 (Pa. Commw. 1978). “[I]n a situation where the Commonwealth has not waived its immunity from suit, the complaint fails to state a claim upon which relief can be granted.” Id. (citing Meagher v. Commonwealth, 266 A.2d 684 (Pa. 1970)). “Therefore, the assertion of such a defense is allowable **at any time** in the proceeding pursuant to Pa. R. Civ. P 1032<sup>2</sup>.” Hoffner, 389 A.2d at 704 (emphasis added).

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<sup>2</sup> “A party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except . . . the defense of failure to state a claim upon which relief can be granted.” Pa. R. Civ. P. 1032.

Petitioner argues that sovereign immunity is not applicable in this matter relying on Haron v. Pennsylvania State Police, 171 A.3d. 344 (Pa. Commw. 2017), where the Pennsylvania State Police (the “PSP”) was found liable for damages for violating CHRIA. Haron is distinguishable from this case in that the petitioner only filed his action against a commonwealth agency, the PSP, and not a commonwealth officer of the PSP. As a result, any exception to sovereign immunity established by Haron with respect to CHRIA does not apply to a commonwealth officer. Therefore, Respondent Walk, as commonwealth officer, is entitled to sovereign immunity and any claims brought against her fail to state a claim upon which relief can be granted.<sup>3</sup>

## CONCLUSION

If the Court finds that Respondents violated CHRIA, then a genuine issue of material facts exists as to whether Respondents’ actions were willful under the circumstances. As a result, Respondents respectfully request that this Court deny Petitioner’s Application for Summary Relief in the Form of [a motion for] Judgment on the Pleadings (the “Summary Relief Application”) with respect to Count II.

Additionally, if the Court finds that Respondents violated CHRIA, then Respondent Walk is entitled to sovereign immunity. Accordingly, Respondents

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<sup>3</sup> Although Respondent OJS, as a combined clerk of courts and prothonotary office, is a commonwealth agency, Haron only held that the PSP was liable for damages. Therefore, to the extent that this Court determines that sovereign immunity exception established by Haron only applies to the PSP, and not to other commonwealth agencies, then Respondent OJS is also entitled to sovereign immunity.

respectfully request that this Court deny the Summary Relief Application as to Respondent Walk with respect to Counts I, II, and III.

Dated: 8/27/2024

By: /s/ Ali M. Alkhatib  
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