

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

COVER SHEET - NOTICE OF FILING OF MOTION OR PETITION UNDER
LOCAL RULES OF CIVIL PROCEDURE

CASE CAPTION:

CIVIL CASE NO.

NATURE OF MATTER FILED: *(please check one)*

- ☒ Petition Pursuant to Rule 206.1 ☐ Response to Petition ☐ Motion for Judgment on the Pleadings Pursuant to Rule 1034(a)
☐ Motion Pursuant to Rule 208.1 ☐ Response to Motion ☐ Summary Judgment Pursuant to Rule 1035.2
☐ Family Law Petition/Motion Pursuant to Rule 206.8

**FILING PARTY IS RESPONSIBLE FOR SERVICE OF THE RULE RETURNABLE
DATE OR HEARING DATE UPON ALL PARTIES**

A motion or petition was filed in the above captioned matter on the 11 day of February, 2021, which:

☒ Requires you, Respondent, to file an Answer within twenty (20) days of the above date to this notice, or risk the entry of an Order in favor of the Petitioner. Answers must be filed and time stamped by the Office of Judicial Support by 4:30 PM on the following date March 3, 2021.

☐ Requires all parties, to appear at a hearing/conference on the ____ day of _____, _____, at ____ in Courtroom ____, Delaware County Courthouse, Media, Pennsylvania. At this hearing/conference you must be prepared to present all testimony and/or argument, and must ensure that your witnesses will be present.

☐ Was timely answered, thus requiring the scheduling of the following hearing in the above captioned matter on: _____, _____ at 10:00 AM in Courtroom ____.

At this hearing, all parties must be prepared to present all testimony and/or argument and **must ensure that their witnesses will be present.**

☐ Qualifies as an Uncontested Motion or Petition, and as such requires neither an answer from the Respondent nor the scheduling of a hearing in this matter.

☒ Has been assigned to Judge John P. Capuzzi Sr.

FOR OFFICE USE ONLY

Mailing date: _____

Processed by: _____

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DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

vs.

BOARD OF ELECTIONS

:
: **COURT OF COMMON PLEAS,**
: **DELAWARE COUNTY**
:
: **ELECTION LAW**
:
: **NO: CV-2020-007523**
:
:
:

**BOARD OF ELECTIONS' PETITION FOR COUNSEL FEES AGAINST PROPOSED
INTERVENORS DASHA PRUETT, GREGORY STENSTROM, & LEAH HOOPES**

Defendant Board of Elections hereby Petitions¹ this Court for its Attorneys' Fees and Costs incurred in responding to Proposed Intervenor Dasha Pruett, Gregory Stenstrom, & Leah Hoopes' (the "Intervenor") Emergency Petition to Intervene & Emergency Petition for Sanctions, and hereby states as follows:

INTERVENORS FILED FALSE AND MERITLESS PETITIONS IN THIS COURT

1. On December 22, 2020, Intervenor filed an Emergency Petition to Intervene and accompanying Petition for Sanctions, alleging various irregularities in the 2020 election and

¹ This petition is made in a timely fashion. *Szwerc v. Lehigh Valley Health Network, Inc.*, 2020 PA Super 160, 235 A.3d 331, 336 (2020) ("Where the litigant files a motion for counsel fees under Section 2503 after entry of a final order, Section 5505 requires the litigant to do so within 30 days of the entry of a final order; the trial court lacks jurisdiction to consider a fee motion filed beyond the 30-day period.").

specifically alleging various violations of an Order entered by this Court on November 4, 2020. *See generally* Emergency Petition to Intervene of Candidate for Political Office Dasha Pruett, and Observers Gregory Stenstrom and Leah Hoopes (the “Petition”); Emergency Petition for Sanctions.

2. The underlying Order in this case set forth specific requirements for observation procedures during the canvassing of absentee and mail-in ballots received during the 2020 Election. *See* November 4, 2020 Order, attached as **Exhibit A**.

3. Petitioners alleged that the Board engaged in various violations of the Order by requiring ballot observers to stand in a pre-designated location within the canvassing office and by permitting ballot observers to enter a storage area in the “back room” of the canvassing office for five minutes every two hours to inspect the storage area. *See* Petition at ¶¶ 27-29.

4. Petitioners asserted that as a result of the Board’s alleged violations, “Candidate Dasha Pruett will be [sic] never know whether she lost her bid to public office in a fair election, or whether she is the victim of a rigged and stolen election.”² *See id.* at ¶ 52.

5. The Intervenors also filed an accompanying Emergency Motion for Sanctions, which, among other things, requested that this Court impose monetary sanctions and prison time on individual Board employees as a result of these supposed violations and alleged election-rigging. *See generally* Emergency Petition for Sanctions.

6. These Petitions were legally and factually baseless, and the Board of Elections is entitled to reasonable attorneys’ fees incurred in responding.

² The official certified election results (which were certified unanimously by the bipartisan Delaware County Board of Elections) reflect that Pruett lost to the Democratic Candidate by 116, 191 votes, or approximately 30 points (64.7% to 35.3%). The results of the election are publicly available on the Pennsylvania Department of State website: <https://www.electionreturns.pa.gov/General/CountyResults?countyName=Delaware&ElectionID=undefined&ElectionType=G&IsActive=undefined>

THIS COURT CONCLUDED THE PETITIONS LACKED MERIT

7. This Court entered an order and accompanying opinion on January 12, 2021 denying the Emergency Petition to Intervene & Emergency Petition for Sanctions. *See* Order dated January 12, 2021, attached as **Exhibit B**.

8. The January 12 Order set out, at length, the legal and factual deficiencies in the Petitions.

9. The January 12 Order noted that Petitioners failed to disclose directly adverse case law, *In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020), in contravention of the Pennsylvania Rules of Professional Conduct. *See* Ex. B at 10.

10. The Court asserted that the failure to cite this directly adverse law “has caused this court, court staff, and the respondent to waste valuable time when the resulting ruling was preordained. While the Petitioners seek sanctions against the Board of Elections, they come before this court with unclean hands and they themselves are the ones whose conduct is contemptable.” *Id.*

11. The January 12 Order also addressed the untimely nature of the Intervenor’s Petitions.

12. This Court noted that “assuming *arguendo* that the allegations enjoyed even some smidgen of merit, the remedy rested at the time of the occurrence, not seven weeks after the canvassing was completed. This is the epitome of lack of due diligence.” *See* Ex. B at 6.

13. This Court also concluded that “there is a total absence of legal merit in the Petitions.” *See id.* at 9.

THE PETITIONS WERE FACTUALLY FALSE

14. In addition to the lack of legal merit in the Petitions, the Intervenor also made numerous false claims regarding procedures implemented at the Board of Elections ballot canvassing office, including the following:

- i. “The BOE was acting under color of State law when it prevented the duly appointed observers from performing their duties as allowed under the Election Code and in accordance with the terms of Judge Capuzzi’s Order.” Petition at ¶ 18.
- ii. “The BOE kept the poll watchers and observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of absentee and mail-in ballots were taking place. Consequently, the BOE created a system whereby it was physically impossible for the candidates’ and political parties’ duly appointed observers to view the ballots and verify that illegally cast ballots were not opened and counted.” *Id.* at ¶ 19.
- iii. “The observers were repeatedly denied access to back rooms where the absentee and mail-in ballots were canvassed and resolved. The BOE kept the observers in a small cordoned off area too far away to see, too far away from the areas where the inspection, opening, and counting of the absentee and mail-in ballots were taking place.” *Id.* at ¶ 22.
- iv. “Hoopes reports that they set up 2 chairs for [the observers], but 20-25 feet from the ballots, too far for them to observe anything. She further reports that she and the other observers were kept inside a roped off area 20 feet from the sorting machine, and they were unable to observe from such a great distance.” *Id.* at ¶ 27.
- v. “Stenstrom responded that he was observing a person plug USB sticks into the [ballot tabulation] computer without any apparent chain of custody and without any oversight. No one stopped the upload, and Mr. Savage was permitted to continue this process and he was then allowed to walk out without any interference or examination by anyone.” *Id.* at ¶ 36.

15. As set forth at length in the Board of Elections’ response to the Petitions, the above contentions are totally baseless and were baseless at the time they were made. *See generally* Board of Elections’ Opposition to Emergency Petition to Intervene.

THE BOARD OF ELECTIONS IS ENTITLED TO COUNSEL FEES

16. “The Judicial Code permits the award of attorneys’ fees in an attempt to curb the filing of frivolous and otherwise improperly brought lawsuits.” *Thunberg v. Strause*, 545 Pa. 607, 616, 682 A.2d 295, 300 (Pa. 1996).

17. Under 42 Pa. C.S. 2503(7), attorneys’ fees are recoverable when sought from a party whose conduct during the pendency of a matter is “dilatory, obdurate, or vexatious.”

18. The aim of this rule “is to sanction those who knowingly raise, in bad faith, frivolous claims which have no reasonable possibility for success, for the purpose of harassing, obstructing, or delaying the opposing party.” *Dooley v. Rubin*, 422 Pa. Super. 57, 65, 618 A.2d 1014, 1018 (Pa. Super. Ct. 1993).

19. “Vexatious conduct has been defined as that which is without sufficient grounds and serving only to cause annoyance.” *Belleville v. David Cutler Grp., Inc.*, No. 1020 C.D. 2017, 2019 WL 2656019, at *7 (Pa. Commw. Ct. June 28, 2019) (citing *Am. Mut. Liab. Ins. Co. v. Zion & Klein, P.A.*, 489 A.2d 259, 261 (Pa. Super. 1985)).

20. “Generally speaking, obdurate conduct may be defined in this context as ‘stubbornly persistent in wrongdoing.’ *Id.* (citing *In re Estate of Burger*, 852 A.2d 385, 391 (Pa. Super. 2004)).

21. “Parties have been found to have acted ‘vexatiously’ when they have pursued their claim in the face of settled law or in contravention of clear court rulings that their claim was without merit.” *Berg v. Georgetown Builders, Inc.*, 2003 PA Super 151, ¶ 33, 822 A.2d 810, 821 (Pa. Super. Ct. 2003) (citations omitted).

22. “An award of counsel fees under Section 2503(7) must be supported by a trial court’s specific finding of dilatory, obdurate or vexatious conduct.” *Spencer v. Spencer*, No. 2025 MDA 2018, 2019 WL 5858236, at *2 (Pa. Super. Ct. Nov. 8, 2019)

23. Here, the Board of Elections is entitled to attorneys' fees from Intervenor because their action was filed in bad faith and without merit.
24. Intervenor's conduct was vexatious as a matter of law. *See Berg*, 822 A.2d at 821.
25. Specifically, Intervenor filed an Emergency Petition to Intervene on grounds that the Board of Elections did not grant sufficient access to ballot observers during pre-canvassing and canvassing of mail-in and absentee ballots.
26. The law on this issue was directly addressed by the Pennsylvania Supreme Court in *In re Canvassing Observation*, 241 A.3d 339 (Pa. 2020), which Intervenor failed to cite.
27. This Court specifically found that the Intervenor's Petitions had "a total absence of legal merit." *See Ex. B* at 9.
28. Because Intervenor filed their Petitions in the face of settled law, and without legal merit, their conduct was vexatious as a matter of law. *See Berg*, 922 A.2d at 821.
29. Intervenor also unduly delayed in filing their petitions.
30. As this Court noted, the Intervenor's challenge "violates the doctrine of laches given their utter failure to act with due diligence in commencing this action." *See Ex. B* at 5.
31. Intervenor sought a remedy in this case for violations of the November 4 Order, yet waited over a month to institute the action.
32. As the Court noted, "[a]ssuming arguendo, that the allegations enjoyed even some smidgen of merit, the remedy rested at the time of the occurrence, not seven weeks after the canvassing was completed. This is the epitome of lack of due diligence." *See Ex. B* at 6.
33. Intervenor's dilatory action is an independent and sufficient ground to award the Board of Elections attorneys' fees. *See In re Estate of Burger*, 2004 PA Super 222, ¶ 16, 852

A.2d 385, 391 (2004), *aff'd*, 587 Pa. 164, 898 A.2d 547 (2006) (“Conduct is “dilatory” where the record demonstrates that counsel displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal work.”).

34. The Court retains discretion in setting an award of counsel fees, which must be reasonable. *Twp. of Millcreek v. Angela Cres Tr. of June 25, 1998*, 142 A.3d 948, 956 (Pa. Commw. Ct. 2016) (“The reasonableness of an award is a matter committed to the sound discretion of the trial court and can be disturbed by an appellate court only upon a clear abuse of discretion.”).

35. The burden of justifying the requested fee is on the claimant. *Gilmore by Gilmore v. Dondero*, 582 A.2d 1106, 1111 (Pa. Super. Ct. 1990).

36. Affidavits of counsel attesting to the amount of fees and their reasonableness have been held sufficient to establish a baseline for a reasonable award of counsel fees. *See, e.g., Twp. of S. Whitehall v. Karoly*, 891 A.2d 780, 785 (Pa. Commw. Ct. 2006) (crediting affidavit by prevailing plaintiff’s attorney that contained testimony concerning hourly rates charged during litigation as well as comparisons to costs similar legal services in the geographic area); *Collier v. Balzer*, 2016 WL 5173530, at *4 (Pa. Super. Ct. July 15, 2016) (examining affidavit of counsel to determine reasonable counsel fee based on counsel’s experience, education, hourly rate, and other factors); *Newspaper Holdings, Inc. v. New Castle Area Sch. Dist.*, 911 A.2d 644, 648 (Pa. Commw. Ct. 2006) (affirming award of attorneys’ fees where the trial court “directed the News to submit a claim for a specific amount along with affidavits attesting to the reasonableness of these expenses”); *see also Twp. of Millcreek*, 142 A.3d at 962 (“There is no requirement that a trial court do a line-by-line analysis of a legal invoice to determine its reasonableness.”).

WHEREFORE, the Board of Elections respectfully requests that this Court award it counsel fees against the Intervenor's in the amount set forth in the accompanying Affidavit of Manly Parks, setting out the Board's incurred fees, attached as **Exhibit C**.

Dated: February 11, 2021

Respectfully submitted,

/s/ J. Manly Parks, Esq.

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EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL DIVISION

DELAWARE COUNTY REPUBLICAN :
EXECUTIVE COMMITTEE : ELECTION LAW
NO:

323 West Front Street :
Media PA, 19063 :
V. :

DELAWARE COUNTY :
BOARD OF ELECTIONS :
201 West Front Street :
Media, PA 19063

ORDER

AND NOW, to wit, this 4th day of November 2020, upon consideration of
Petitioner's Emergency Petition or Relief Seeking Order Granting Access to Canvassing of
Official Absentee Ballots and Mail-In Ballots, and the hearing held on November 4, 2020 wherein
argument was heard from both Parties, it is hereby **ORDERED** and **DECREED** as follows:

1. Four Observers in total (2 observers from the Republican Party, or affiliated candidates, and 2 observers from the Democratic Party, or affiliated candidates,) are permitted to observe the resolution area at all hours while ballots are being resolved;
2. Two observers (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic Party, or affiliated candidates,) are permitted to observe the sorting machine area at all times while the machine is in use. However, all observers shall stand back while the machine is in use due to safety concerns.
3. At two-hour intervals, two observers in total (1 representing the Republican Party, or affiliated candidates, and 1 representing the Democratic party, or affiliated candidates) are permitted to enter the ballot room, to examine the room; however, are not permitted to examine the physical ballots contained within the room, individually. They must be escorted by a member of the Election Board Staff with the time not to exceed five minutes each visit.

4. Any observer may not interference with the process, nor may any observer object to individual ballots.

By the Court:



JUDGE JOHN P. CAPUZZI, SR.

EXHIBIT

B

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

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

v.

BOARD OF ELECTIONS

NO.: CV-2020-007523

ORDER

Before the Court are two Petitions. The first is the Emergency Petition to Intervene of Candidate for Political Office, Dasha Pruett, and Observers Gregory Stenstrom and Leah Hoopes. The second is an Emergency Petition Against the Board of Elections for Contempt for Violating Judge Capuzzi's 11/4/2020 Order and for Violating Election Code Provisions Allowing Observers. For the reasons set forth in the Opinion below, both Petitions are **DENIED WITH PREJUDICE**.

OPINION

Without per adventure, the general election of 2020 was the most contentious, most impassioned and most disputed in modern history. While this Court is not oblivious to this, it is the duty of the judiciary to apply the rule of law free and clear of outside influences or the clamor that has arisen. A fair and impartial jurist who adheres to the Constitution of the United States and the Constitution of the Commonwealth of Pennsylvania in accordance the oath of law that binds the conscience is what is mandated and what is expected. It is through this lens that the Court has addressed the issues presented.

The essence of the Petitions are as follows: First Petitioners seek to intervene in the original matter as captioned above. Second, Petitioners seek to have the Board held in contempt for

allegedly violating the Court's order as follows: Petitioners claim that they were not granted full access to a rear room where mail-in and absentee ballots were being resolved; observers were not permitted to enter a rear locked area where ballots were stored; and observers were confined to a "pen" which did not allow meaningful access to observe/view the area where the sorting machine was in use. As a result, Petitioners seek the USB V cards that when inserted into the computer tabulated the votes and to enjoin the United States House of Representatives from seating Dasha Pruett's opponent. These claims lack a scintilla of legal merit.

At the very outset it is extremely important to highlight that the Delaware County Republican Executive Committee, which was the party that filed the original petition, has not raised an issue with the Board of Elections compliance with the Court's Order of November 4, 2020. Likewise, the Republican Executive Committee has not filed a response to the Petitions presently before the Court. Furthermore, each alleged factual averment within the petitions was known weeks before this 11th hour, pre-holiday filing of December 22, 2020 and, thus, did not constitute such an emergency that the Board of Elections not be given adequate time to research and respond accordingly.¹

In order to place the current controversy in perspective and to appreciate the canvassing of ballots, it is necessary to set forth the election process of 2020, which, in this Commonwealth, was substantially different from prior elections. Following the general election of 2016, there was grave concern that foreign governments had interfered with the election process. There was further concern that these foreign governments or others could or may have hacked into the computerized voting systems employed in many jurisdictions. Additionally, some of these computerized

¹ The time frame set forth in the Petitions was between November 3, 2020 and November 5, 2020, and whereas the Petitions were not filed until December 22, 2020, the Court deemed these not to be emergent and did mandate that the Board of Elections be given adequate time to respond.

systems lacked a paper trail that could be subject to audit, if needed or required, in order to validate the count. Finally, it was crystal clear that the expected voter turnout would far surpass recent elections. It is with this backdrop that Governor Wolf and the Legislature changed, altered, and/or modified the manner in which elections in the Commonwealth are conducted.

In 2018, U.S. Department of Homeland Security Secretary, Kirstjen Nielsen, called on all state and local election officials to make certain that by the 2020 presidential election every American votes on a system that produces a paper record or ballot that can be checked and verified by the voter and audited by election officials. The Pennsylvania Department of State informed all 67 counties that it must have voting machines that produce voter-verifiable records and meet 21st century standards of security, auditability and accessibility by December 31, 2019. As of June 2020, all Pennsylvania counties had complied. *See, Department of State website.*

In addition to absentee ballots, the Legislature significantly modified the election process by adding a provision which enabled any qualified elector to apply for a mail-in ballot without restriction or reason. *25 Pa. C.S. §3150.12 (a). See, Section 14 of Act 2019, October 31, P.L. 552, No. 77.*

NO CASE OR CONTROVERSY IN WHICH TO INTERVENE

The original petitioner was the Delaware County Republican Executive Committee. The original petitioner has not challenged this Court's original ruling and order, nor has it filed anything in response to the current petitioners' request to intervene. Therefore, there is nothing before this court that would require the intervention of a third-party.

Pennsylvania Rule of Civil Procedure 2327 sets forth who may intervene. The Rule is as follows: "At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if:

- (1) The entry of judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or
- (2) Such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof; or
- (3) Such person could have joined as an original party in the action or could have been joined therein; or
- (4) The determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Pursuant to Pa. R.C.P. 2329, the court may refuse an application for intervention where the interest of the petitioner is adequately represented; or the petitioner has unduly delayed in making application for intervention. Here, the interests of the observers were more than adequately represented by the Delaware County Republican Executive Committee at the relevant time. Furthermore, the alleged violation occurred on November 5th, making this post-election application of December 22nd untimely. Thus, the denial.

Ironically, in the very action they wish to be part of, Petitioners' claim that the Delaware County Republican Executive Committee does not adequately represent their interest. As the transcript of the emergency hearing that was held the evening of November 4, 2020 demonstrates, the resolution of the controversy adequately addressed the claims of the original petitioner who stood in the shoes of the Republican observers and candidates. Additionally, the ruling by this court fully comported with the law as it pertained to observers and no appeal was taken of the order that was issued.

The third-party cannot latch onto the original petition. If the third-party truly believed there was a violation of this court's order, then it should have filed a new action under a separate docket number.

LACK OF JURISDICTION

The Order that Petitioners contend has been violated was issued on November 4, 2020. That Order specifically addressed the issue of when and where observers were permitted.

Once an order is issued, the Court of Common Pleas retains jurisdiction for thirty (30) days. During this thirty-day period, the court may modify or rescind the original order. *42 Pa. C.S. §5505*.

In the instant matter, the Petitioners could have challenged the manner in which the Board of Elections complied with the Order at the time they allege they were denied the opportunity to observe and requested a modification of the Order. As noted in the Petition, observer Stenstrom called this judge's chambers twice on November 5th and was advised by the judge's staff to obtain legal representation. This was not done.

It must also be noted that during this thirty-day period, the observers could have filed an appeal to the Commonwealth Court if they believed this Court's directive did not comport with election law. Again, this was not done.

DOCTRINE OF LACHES

Petitioners' challenge violates the doctrine of laches given their utter failure to act with due diligence in commencing this action. Laches is an equitable doctrine that bars relief when a

complaining party is guilty of want of due diligence in failing to promptly institute an action in prejudice of another. *Stilp v. Hafer*, 718 A.2d 290, 292 (Pa. 1998).

A plain reading of the Petition for Sanctions sets forth allegations that occurred during the pre-canvassing and canvassing of election ballots. Assuming *arguendo*, that the allegations enjoyed even some smidgen of merit, the remedy rested at the time of the occurrence, not seven weeks after the canvassing was completed. This is the epitome of lack of due diligence.

INDISPENSIBLE PARTY

An indispensable party is one whose rights are directly connected with and affected by the litigation that he must be a party of record to protect such rights. *Columbia Gas Transmission Corporation v. Diamond Fuel Company, et al.*, 464 Pa. 377, 346 A.2d 788 (Pa. 1975). It has long been established that unless all necessary and indispensable parties are parties to the action, the Court is powerless to grant relief. *Tigue v. Basalyga*, 451 Pa. 436, 304 A.2d 119 (Pa. 1973). Under Pennsylvania law, the failure to join an indispensable party implicates the trial court's subject matter jurisdiction. *Orvian v. Mortgage I.T.*, 118 A.3d 403 (Pa. Super. 2015).

Petitioners, in the *ad damnum* clause, seek an order, declaration and/or injunction enjoining the "winning" U.S. House of Representative candidate from exercising official authority. The Court takes judicial notice that the winning candidate was U.S. Representative Mary Gay Scanlon. Representative Scanlon has a direct interest in this matter, as it seeks to prevent her from exercising her duties in the House of Representatives. Therefore, Representative Scanlon is an indispensable party; yet, Petitioners never served her with process, thereby denying her the right to be heard. Furthermore, failure to do so deprives this court of subject matter jurisdiction.

MOOTNESS

The identical issue before this court has been addressed by our Supreme Court. *IN RE: Canvassing Observation, Appeal of: City of Philadelphia Board of Elections*, 241 A.3d 339 (Pa. 2020) decided November 17, 2020. In advance of the election, the Philadelphia Board of Elections arranged workspace for its employees at the Philadelphia Convention Center for the pre-canvassing and canvassing of mail-in and absentee ballots.² Discreet sections of a designated area within the Convention Center were devoted to various aspects of the process.

Pursuant to the election code, designated observers were permitted to physically enter the Convention Center hall and observe the entirety of the process from behind a waist-high security fence that separated the observers from the work-space of Board employees. At 7:45 a.m. on the morning of the election, the Trump Campaign filed a suit challenging the location where observers could watch the process. A hearing was held at which time the attorney for the Campaign argued “that Section 3146.8(b) of the Election Code- which allows designated watchers or observers of a candidate to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded, 25 P.S. §3146.8(b) – requires that the observers have the opportunity to “meaningfully” see the process. In rejecting the argument, the trial court noted that Section 3146.8 contained no language mandating “meaningful observation”; rather, the court interpreted the section as requiring only that the observers be allowed to be “present” at the opening, counting and recording of the absentee or mail-in ballots.” *Id.* @ 343. The trial court also noted that Section 4146.8 provides for no further specific activities for the watchers to do other than to simply be present. The court went onto opine that, under this

² The Delaware County Board of Elections leased space at the Wharf Office Building in Chester in order to accommodate the work staff and necessary machines.

section, watchers are not directed to audit ballots or to verify signatures, to verify voter addresses, or to do anything else that would require a watcher to see the writings or markings on the outside of either envelope, including challenging the ballot or ballot signatures. *Id.*

Later, on election day, the trial court denied the Campaign's request that the Board modify the work area to allow for closer observation of the on-going ballot canvassing. The Campaign immediately appealed to the Commonwealth Court, wherein Judge Fizzano-Cannon held a status conference on the night of November 4, 2020 and issued an order on the morning of November 5, 2020, which reversed the trial court. Judge Fizzano-Cannon's order directed the trial court to enter an order by 10:30 a.m. to require "all candidates, watchers, or candidate representatives to be permitted to observe all aspects of the canvassing process within 6 feet, while adhering to COVID-19 protocols." *Id.* 343, 344. In her opinion filed later that day, Judge Fizzano-Cannon found Section 3146.8(b) to be ambiguous and that in order for representatives to fulfill their reporting duty to their candidate, they are required to "have the opportunity to observe the process upon which they are to report, and so mere physical presence of the observers was insufficient to guarantee this "meaningful observation." *Id.* @ 344. The Board then filed an emergency petition for allowance of appeal with Supreme Court on the morning of November 5, 2020.

By Order dated November 9, 2020, the Supreme Court granted the Petition and set forth three issues, one of which was whether the Commonwealth Court erred in reversing the trial court. At the outset, the Court noted that because ballots were still being canvassed by the Board, the question was not moot and thus, ripe for determination.

The Supreme Court addressed the issue by stating that 3146.8(g)(1.1) requires only that an authorized representative"

“be permitted to *remain in the room* in which the absentee ballots and mail-in ballots are pre-canvassed (emphasis added) and Section 3146.8(g)(2) likewise mandates merely that an authorized representative “be permitted to *remain in the room* in which the absentee ballots and the mail-in ballots are canvassed. (emphasis added). While the language contemplates an opportunity to broadly observe the mechanics of the canvassing process, we note that these provisions do not set a minimum distance between authorized representatives and canvassing activities occurring while they “remain in the room.” The General Assembly, had it so desired, could have easily established such parameters; however, it did not. It would be improper for this Court to judicially rewrite the statute by imposing distance requirements where the legislature has, in the exercise of its policy judgment, seen fit not to do so. *See Sivick v. State Ethics Commission* __Pa.__, 238 A.3d 1250 (2020). Rather we deem the absence of proximity parameters to reflect the legislature’s deliberate choice to leave such parameters to the informed discretion of county boards of elections, who are empowered by Section 2642(f) of the Election Code to make and issue such rules, regulations and instructions, not inconsistent with law, as they may deem necessary for the guidance of ... elections officers.” *IN RE: Canvassing Observation, Appeal of: City of Philadelphia Board of Elections*, 349, 350.

In full accordance with the Supreme Court holding, the Delaware County Board of Elections was charged with establishing observation areas. Prior to the above Supreme Court ruling, this court entered an order which required the Board to allow for designated areas and times for observation activities which deviated from the areas established by the Board. The Board adhered to this order. Strikingly, at the time of the filing of this frivolous action, the issue now brought forth by the Petitioners had been adjudicated by the highest court in the Commonwealth, i.e., the Delaware County Board of Elections had full authority to establish observation areas as it deemed fit. Consequently, there is a total absence of legal merit in the Petitions.

RULE OF PROFESSIONAL CONDUCT

Petitioners, through counsel, pray the court hold the Board or Elections in contempt for disobeying the Order of November 4, 2020; hold the Board of Elections guilty of a misdemeanor for violation of provisions of the Election Code; require the Board of Elections to pay a \$1,000.00 sanction to Dasha Pruett; and sentence members of the Board of Elections to 1 year in prison.

Rule 3.3. requires Candor Toward the Tribunal. Pursuant to *Section 2*, a lawyer shall not knowingly fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

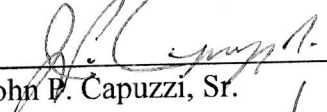
The above cited Supreme Court opinion was published on November 17, 2020. No where in the Petition, the accompanying memorandum of law, or Petitioner's Reply to Response of the Board of Elections does counsel for the Petitioners reference, let alone cite, this opinion which contains the controlling law. As one who obviously has invested significant time in crafting the legal positions of the client, due diligence mandated that counsel keep abreast of the legal landscape which was unfolding, and which was published on the Court's web site, and duly noted in newspapers of general circulation and The Legal Intelligencer. To neglect to exercise due diligence, when the claims made seek to alter or change the election canvassing process and the election results, is unconscionable and inexcusable. Consequently, this dereliction of duty has caused this court, court staff and the respondent to waste valuable time when the resultant ruling was preordained. While the Petitioners seek sanctions against the Board of Elections, they come before this court with unclean hands and they themselves are the ones whose conduct is contemptable.

CONCLUSION

The Delaware County Board of Elections had the authority to establish observation areas in the facility where the pre-canvassing and canvassing of the absentee ballots and mail-in ballots was taking place. In response to a petition by the Delaware County Republican Executive Committee, this Court ordered the Board to allow for closer observation at specific locations and specific time intervals, as the case warranted. The Board fully complied with this order.

The Petitions herein are untimely and do not comport with the law. As our Supreme Court stated, it is the responsibility of the legislature to define distance parameters for positioning of observers and, absent these, the responsibility lies with county board of elections.

BY THE COURT:



John P. Capuzzi, Sr. J.
1/12/21

Cc: Deborah Silver, Esquire
Manly Parks, Esquire
William Martin, Esquire

EXHIBIT

C

DUANE MORRIS LLP

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NMCentrella@duanemorris.com

Attorneys for Board of Elections

DELAWARE COUNTY REPUBLICAN
EXECUTIVE COMMITTEE

vs.

BOARD OF ELECTIONS

:
:
: **COURT OF COMMON PLEAS,**
: **DELAWARE COUNTY**
:
: **ELECTION LAW**
:
: **NO: CV-2020-007523**
:
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:

**DECLARATION OF J. MANLY PARKS IN SUPPORT OF BOARD OF ELECTIONS’
PETITION FOR COUNSEL FEES**

I, J. Manly Parks, do hereby depose and state:

1. I submit this declaration in support of the Board of Elections’ Petition for Counsel Fees from Proposed Intervenors Dasha Pruett, Gregory Stenstrom, and Leah Hoopes (the “Proposed Intervenors”). I am over the age of 18 and I submit this declaration based upon my personal knowledge.

2. I am Solicitor of the Delaware County Board of Elections (the “Board”) and counsel of record for the Board in this matter.

3. I am the billing partner supervising this matter for the Board of Elections’ outside counsel in this matter, Duane Morris LLP.

4. I am currently a partner at Duane Morris LLP and have been since 2003. I have been associated with Duane Morris since 1996.

5. Duane Morris LLP is an AmLaw 100 firm founded in Philadelphia, Pennsylvania in 1904 which today has more than 800 attorneys in nearly 30 offices across the United States and internationally.

6. In my law practice I represent clients in the areas of complex business litigation, antitrust law, franchise and distribution law, intellectual property litigation, and—most relevant to the matter at hand—election law matters.

7. I have extensive experience in election law matters. Prior to my current role as Solicitor for the Delaware County Board of Elections, which I have held since January of 2020, I previously served as Solicitor of a county political party for 9 years. In addition, I have represented and advised several candidates for offices from municipal-level to the United States Senate in various election law matters ranging from nomination petition challenges to election recounts. I have also served as County Counsel in Delaware County for U.S. presidential campaigns.

8. My standard hourly billing rate is \$1,085 per hour. Nicholas Centrella, an associate in Duane Morris's trial group who assisted me in this matter, has a standard billing rate of \$480 per hour. Our standard rates were discounted significantly for this specific matter. My rate for this matter was \$450 per hour. Mr. Centrella's rate for this matter was \$413.25 per hour.

9. Our *standard* billing rates are in line with average rates among AmLaw 100 firms. *See, e.g.*, Jeff Blumenthal, "More on Law Firm Billing Rates," Philadelphia Business Journal, <https://www.bizjournals.com/philadelphia/blog/jeff-blumenthal/2011/02/more-on-law-firm-billing-rates.html> (accessed February 2, 2021) (noting average associate rate among AmLaw 100

firms in 2010 was \$425, and partner rates averaged \$658); Vanessa O’Connell, “Big Law’s \$1,000-Plus an Hour Club”, The Wall Street Journal, <https://www.wsj.com/articles/SB10001424052748704071304576160362028728234> (accessed February 2, 2021) (reporting on AmLaw100 firms who, in 2011, incurred partner fees regularly exceeding \$1,000 per hour and associate fees up to \$700 per hour). Thus, the heavily discounted rates charged for this matter compare extremely favorably with those of our peer firms.

10. Attached to this Declaration as **Exhibit C-1** is a summary of the time each attorney billed in connection with their work on the responses to the Petitions at issue and related matters.

11. Collectively, the total amount charged by Duane Morris LLP for representation of the Board in connection with the Petitions at issue and related matters was \$19,224.56. I spent 8.1 hours of time working on matters related to the Petitions at issue. At my operative billing rate for this matter of \$450 per hour, the total amount charged to the Board for my work in connection with matters related to the Petitions at issue was \$3,645. Mr. Centrella spent 37.7 hours of time working on matters related to the Petitions. At his operative billing rate for this matter of \$413.25 per hour, the total amount charged to the Board for Mr. Centrella’s work in connection with matters related to the Petitions at issue was \$15,579.56. These fees are reasonable given the facts and circumstances of the Petition, the work performed, the time expended to perform the work, the attorneys involved, and the billing rates for those attorneys.

12. Having incurred counsel fees of \$19,224.56 in connection with matters related to the Petitions at issue, the Board respectfully requests an award of attorneys’ fees from Prospective Intervenors in that same amount.

13. As the court is aware, the Prospective Intervenor filed Petitions alleging widespread voter fraud in the 2020 Election, an issue of grave public importance.

14. Prospective Intervenor additionally sought sanctions against individual Board of Elections employees, up to and including one year of jail time. This represented significant possible exposure for the Board of Elections.

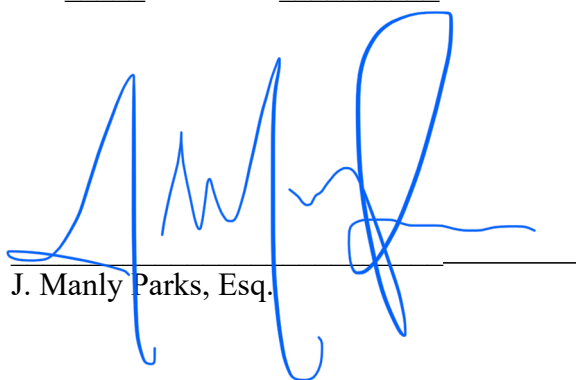
15. Given the nature and extent of the work involved, including the issues of public importance and the potential for significant liability asserted by the Prospective Intervenor, and the billing rates charged by peer firms to Duane Morris, I believe the amount of fees requested is eminently reasonable.

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SIGNED UNDER PENALTY OF PERJURY ON THIS 11th DAY OF Feb., 2021



J. Manly Parks, Esq.

EXHIBIT

C-1

SUMMARY OF ATTORNEY TIME

I. J. Manly Parks

TASK	TIME	COST
Initial case correspondence with N. Centrella re: opposition to petition to intervene.	.8 hours	\$360.00
Reviewed working draft of petition and corresponded with Deborah Silver regarding the preservation of certain documents.	.8 hours	\$360.00
Reviewed Intervenors' Petition for Expedited Discovery and corresponded regarding the same with N. Centrella and W. Martin; reviewed and edited drafts of opposition to Petitions to Intervene & for Sanctions; and corresponded with W. Martin regarding Intervenors' contact with Board of Elections Staff and strategy for dealing with same.	1.40 hours	\$630.00
Corresponded with Board of Elections employees regarding contact with investigators from Intervenors; reviewed working draft of responses to petition to intervene and	2.50 hours	\$1,125.00

petition for sanctions along with supporting declarations and corresponded with N. Centrella regarding the same; reviewed correspondence from counsel for Intervenor regarding discovery demands and drafted response to same, as well as corresponded with N. Centrella and W. Martin regarding response for same		
Reviewed reply brief in support of Petition to Intervene & for Sanctions and corresponded with N. Centrella & W. Martin regarding the same; corresponded with counsel for Intervenor regarding Intervenor's demand for discovery, and correspondence with W. Martin regarding strategy for same; corresponded with counsel for Intervenor regarding private investigators' contact with Board employees	1.10 hours	\$495.00
Reviewed Order denying Petition for Bifurcation and corresponded with N. Centrella re: same	.1 hours	\$45.00
Reviewed Order denying Petition for Expedited	.1 hours	\$45.00

Discovery and corresponded regarding the same.		
Corresponded with W. Martin and Board staff regarding contacts from investigators for Intervenor; reviewed Order denying Petition to Intervene and corresponded with W. Martin and Board of Elections regarding same.	.6 hours	\$270.00
Corresponded with N. Centrella regarding research on ability to recover attorneys' fees and reviewed draft of petition for same; corresponded with W. Martin regarding petition for fees.	.7 hours	\$315.00

TOTALS:

8.10 hours

\$3,645.00

II. Nicholas Centrella, Jr.

TASK	TIME	COST
Researched arguments in opposition to petition to intervene under applicable Pennsylvania law	7.90 hours	\$3,264.67
Drafted and edited memorandum of law in opposition to Petition to Intervene & Petition for Sanctions and associated	8.20 hours	\$3,388.65

declaration of J. manly Parks, as well as exhibits for same		
Drafted and edited paragraph- by-paragraph response to Petitions to Intervene & for Sanctions; edited and finalized same along with memorandum of law and associated exhibits, and filed entire motion package	8.90 hours	\$3,677.925
Reviewed litigation hold letter served by Intervenor and reviewed Emergency Petition for Expedited Discovery of Ballots	.3 hours	\$123.97
Reviewed correspondence regarding contact with Board employees by Intervenor's private investigators and reviewed Intervenor's reply brief in support of Petitions to Intervene & for Sanctions	.8 hours	\$330.60
Reviewed case docket on multiple occasions regarding entry of case orders and drafted summary e-mails of the same.	.6 hours	\$247.96
Reviewed Order denying Petitions to Intervene & for Sanctions and drafted analysis e-mail regarding the same.	.4 hours	\$165.30
Drafted and edited letter regarding sanctions against Petitioners' counsel	3.30 hours	\$1,363.73

Researched Pennsylvania law on recovery of attorneys' fees and drafted analysis e-mail to the client regarding the procedure for recovery of fees and recommendation for same	2.70 hours	\$1,115.78
Drafted and edited petition for counsel fees and researched evidentiary requirements for proving reasonableness of counsel fee	4.60 hours	\$1,900.95

TOTALS:

37.70 hours

\$15,579.56