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for purposes of identification.*

April 23, 2021

Dan Byrnes  
York County Clerk of Courts  
York County Judicial Center  
45 North George Street  
York, PA 17401

Via email: [REDACTED]

Re: Fee schedule

Dear Mr. Byrnes:

We are writing to follow up on the ongoing public access issues in the York County Clerk of Courts Office. We have reviewed your April 22, 2021 response letter and appreciate your bringing the office into compliance with the copy fee provision of the UJS Public Access Policy. However, several issues remain outstanding and must be addressed.

First, and most problematic, is the apparent lack of public access to judicial records stored in the Clerk of Courts Office. As we understand the facts, the office relies on electronic records rather than paper filings. Please correct us if we have misunderstood your current practices. Further, we also understand that in the past there had been public access terminal computers that allowed the public to review judicial records in the Clerk of Courts Office. However, in recent years those units have been removed. We also understand that public access software was recently removed from the York County Judicial Center's Self-Help Center computers, eliminating the public's ability to access judicial filings in that location. There is also no viewing portal generally available online. Currently, the public cannot inspect criminal records filed with the Clerk of Courts Office in York County without the involvement and oversight of staff. This lack of access is wholly inconsistent with the constitutional and common law requirements for open courts and must be addressed.

Second, and relatedly, the issue of redaction and associated fees remains. We understand you are concerned about public access to "unredacted" files, although it is not clear what information is being withheld or the legal justification for such limits. We believe that your practice is to require staff intervention and review anytime the public wishes to access judicial records and when "redaction" is required, you believe fees should be imposed on requesters. These issues stem from the larger public access problem resulting from the removal of public access terminals and a general misapplication and misunderstanding of both the UJS Public Access Policy and the constitutional and common law rights that provide its foundation.

The American system of justice is founded on principles of openness and transparency.<sup>1</sup> Indeed, our Commonwealth's Constitution unambiguously states that "[a]ll courts shall be open." Pa. Const. art. I, § 11. Open courts promote public confidence in the system and help to ensure that the system is fair, consistent and accountable. In order for the public to have any meaningful access, however, it must be able to understand the particulars of a given case. Thus, under well-established precedent, the public's constitutional and common law rights to access court records can only be overcome in narrow circumstances when the party seeking to seal information can carry a heavy burden. Your current practices overlook these principles both in their intent and application.

Every day, court records are used by a wide variety of organizations and individuals, and for wide-ranging purposes. Individuals accessing and using these records include community members, lawyers, genealogists, librarians, academics, civil rights activists, historians, businesses, students, and many others. From a press perspective, newsrooms across the Commonwealth use court records on a daily basis to inform their communities of significant events. Journalists rely on court records to write accurate stories about the judicial system and the cases and individuals subject to the courts' jurisdiction. Access to the courts' records is not only critically necessary, it is constitutionally required.

The public has a constitutional and common law right to walk into the Clerk of Courts Office and inspect judicial records, and that right applies to electronic as well as paper records. Inspection allows for a member of the public to examine and understand a case without the necessity of having to pay for or make copies. To the extent a judicial record has been sealed for good cause, only the record subject to seal can be withheld, not the entire file. Similarly, if a record is subject to limited access pursuant to the UJS Public Access Policy, only that information subject to limited access may be withheld, and the rest of the file must remain public for either inspection or copying (and sometimes both, including through a paper copier or a person's cell phone camera, for which no financial charge is necessary).

It is also critical to understand the terms of the UJS policy governing filing and access to confidential information. The policy makes clear that the filers (attorneys and parties) bear the burden of compliance with the confidential filing requirements, not court staff, and they are also required to provide a certification of compliance with the policy. See Sections 7.00(D) and 8.00(D). Further, Sections 7.00(E) and 8.00(E) state:

E. A court or custodian is not required to review any filed document for compliance with this section. A party's or attorney's failure to comply with this section *shall not affect access to case records that are otherwise accessible.*

Further, Sections 7.00(F) and 8.00(F) allow a judge to remedy records that are non-compliant and issue a court order to recoup associated costs in the form of sanctions imposed on the non-compliant filer. They state:

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<sup>1</sup> Commonwealth v. Hayes, 414 A.2d 318 (Pa. 1980); Commonwealth v. Fenstermaker, 530 A.2d 414, 421 (Pa. 1987); R.W. v. Hampe, 626 A.2d 1218, 1221 (Pa. Super. 1993); Publicker Industries, Inc. v. Cohen, 733 F.2d 1059, 1070 (3d Cir.1983); Littlejohn v. Bic Corp., 851 F.2d 673, 678 (3d Cir. 1988); In re M.B., 819 A.2d 59 (Pa. Super. 2003).

F. If a filed document fails to comply with the requirements of this section, a court may, upon motion or its own initiative, with or without a hearing order the filed document sealed, redacted, amended or any combination thereof. A court may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

Simply put, your office is not required to oversee compliance with the UJS Public Access Policy and you are not permitted to limit public access for a party's or attorney's failure to comply with its terms. If a record is filed in your office without an accompanying confidential document form or confidential information form, the record is public and must be accessible. Similarly, if a record is filed in a non-compliant manner, the UJS Public Access Policy authorizes the court, not the Clerk of Courts, to bring the filing into compliance and impose sanctions on filers to recoup associated costs. The UJS Public Access Policy does not authorize your office to bring filings into compliance on its own initiative and fees associated with non-compliant filings may only take the form of court-ordered sanctions on filers, not fees imposed on the public.

The U.S. Supreme Court and our Commonwealth's founders recognized that it is imperative that the public understand and have access to judicial records and these rights form the basis of the UJS Public Access Policy. Courts across the Commonwealth recognize these basic tenets of law and operate in compliance with them. The York County Clerk of Courts Office must do the same.

Consistent with the constitutional and common law requirement for open courts as well as the UJS Public Access Policy, we respectfully request that the public access terminal be reinstalled in the Clerk of Courts Office and public access software be reinstalled in the Self-Help Center no later than May 7, 2021. Further, we suggest that when redaction of non-compliant filings is permitted by the UJS Public Access Policy and directed by the court, any associated Clerk of Court fees be forwarded to the court for imposition on filers in accordance with the terms of the UJS Public Access Policy.

Thank you for taking time on this issue and for bringing the Clerk of Courts Office into compliance with the law.

Sincerely,

*/s/Melissa Bevan Melewsky*  
Melissa Bevan Melewsky  
In-house Counsel  
Pennsylvania NewsMedia Association  
[REDACTED]

*/s/Paula Knudsen Burke*  
Paula Knudsen Burke  
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Cc: York County Clerk of Courts solicitor Stephen McDonald (via email)  
York County Judicial administrator Paul Crouse (via email)  
York County President Judge Maria Musti Cook (via email)  
Stacey Witalec, AOPC communications director (via email)