

Filed 4/14/2020 1:05:00 PM Supreme Court Eastern District
125 EM 2019

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: CONFLICT OF INTEREST OF THE	:	No. 125 EM 2019
OFFICE OF THE PHILADELPHIA DISTRICT	:	
ATTORNEY,	:	
	:	
PETITION OF: MAUREEN FAULKNER,	:	
WIDOW OF DECEASED POLICE OFFICER	:	
DANIEL FAULKNER	:	
	:	

ORDER

AND NOW, to wit, this __ day of April, 2020, upon consideration of Respondent's Motion to Compel the Identification of Hearing Witnesses and Production of Hearing Documents, it is hereby ORDERED, ADJUDGED, and DECREED that said motion is **GRANTED**.

BY THE COURT:

Hon. John M. Cleland

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

IN RE: CONFLICT OF INTEREST OF THE	:	No. 125 EM 2019
OFFICE OF THE PHILADELPHIA DISTRICT	:	
ATTORNEY,	:	
	:	
PETITION OF: MAUREEN FAULKNER,	:	
WIDOW OF DECEASED POLICE OFFICER	:	
DANIEL FAULKNER	:	
	:	

**RESPONDENT'S MOTION TO COMPEL THE
IDENTIFICATION OF HEARING WITNESSES AND
PRODUCTION OF HEARING DOCUMENTS**

AND NOW comes Respondent, the District Attorney's Office ("DAO"), by and through its attorneys, Schnader Harrison Segal & Lewis LLP, and files the within Motion to Compel the Disclosure of Hearing Witnesses and Documents, asserting and setting forth as follows:

1. The Hon. John M. Cleland, Special Master, has scheduled an evidentiary hearing in this matter to begin on May 4, 2020 (the "Hearing").
2. In an Order, dated April 7, 2020 (the "Order"), the Hon. Cleland limited the inquiry to two actions: (1) not opposing a defense-requested remand to the trial court for consideration of three categories of documents

discovered by the DAO while the trial court's decision was on appeal to the Superior Court; and (2) not interviewing Joseph McGill.

3. The Order permits Petitioners to engage in discovery, under oath, of individuals identified by the DAO as having made the two specific decisions in question, limited to the four questions in paragraph 3 of the Order. Order at ¶¶2-3.

4. The Order also permits Petitioners to engage in discovery of the District Attorney, Paul George and Jody Dodd, again limited to the four questions in paragraph 3 of the Order. *Id.*

5. The Order sets Petitioner's discovery deadline as April 29, 2020. *Id.* at ¶4.

6. The parties received the Order on April 8, 2020. That same day, counsel for Petitioner contacted counsel for the DAO regarding scheduling depositions of the individuals permitted by the Order. After the exchange of a series of emails, counsel for the parties agreed that the depositions requested by Petitioner will be conducted on April 20, 21, and 22. Counsel for the DAO is working diligently to schedule the individual deponents on those three days and expects to have a proposed schedule shortly.

7. The same day - on April 8, 2020 - counsel for the DAO asked that Petitioner disclose whether it intends to call witnesses other than those

identified by the DAO pursuant to the Order, and whether it intends to present at the Hearing any documentary evidence beyond what it has attached to its filings in this matter.

8. Specifically, counsel for the DAO wrote:

George, please let me know whether you intend to present at the hearing testimony of any witnesses other than those whose depositions you will take pursuant to Judge Cleland's Order or documentary evidence that you have not attached to your pleadings, motions and applications in this proceeding. If you do intend [to] present any such witnesses or documents, please identify them and let me know whether you will agree to depositions of the witnesses and production of the documents. Thank you.

9. Despite the DAO's request for this information, Petitioner has not provided it.

10. The DAO requires Petitioner to identify the witnesses and documents that it intends to use at the Hearing so that the DAO can adequately prepare. The DAO's need for Petitioner to provide this information is particularly important whereas here, the parties have not engaged in the traditional discovery process and where, to date, the DAO has had no opportunity to depose witnesses or request information related to Petitioner's King's Bench petition.

11. Discovery is a two-way street. *See Pa. R. C. P. 4003.1(a)* (explaining that parties are generally required to engage in reasonable discovery as

to “any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of any other party.”).

12. Moreover, Pennsylvania courts do not permit “trial by ambush.” Through discovery, parties may discover the evidence that will be offered at trial, and assess the credibility of witnesses. *Gregury v. Greguras*, 196 A.3d 619, 628 (Pa. Super. Ct. 2018)(“one of the primary purposes of discovery is to prevent the surprise and unfairness of a trial by ambush, in favor of a trial on the merits.”); *Clark v. Hoerner*, 525 A.2d 377, 382 (Pa. Super. Ct. 1986)(“the purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits”); *Golato v. Gillespie*, 70 Pa. D. & C.2d 15, **24 (Ct. Com. Pl. Phila. Cty. 1975)(“the purpose of our discovery rules, moreover, is to eliminate the element of surprise as to evidence presented at trial”).

13. Accordingly, Respondent requests that the Court compel Petitioner to (1) identify all witnesses that Petitioner intends to call at the Hearing and (2) produce all documentary evidence that Petitioner intends to use at the Hearing.

WHEREFORE, Respondent respectfully requests that this Honorable Court enter an Order compelling Petitioner to, (1) identify the witnesses that Petitioner intends to call at the Hearing, and (2) produce all documentary evidence

that Petitioner intends to use at the Hearing, by the close of business on April 17, 2020.

Respectfully submitted,

/s/ David Smith

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Attorneys for Respondent,

The Office of the District Attorney

Dated: April 14, 2020

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ David Smith

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2020, a true and correct copy of the foregoing document was filed and served via e-mail to the Special Master, with copies to all counsel:

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