

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

---

No. 294 MD. 2021

---

JACOB DOYLE CORMAN, III, et al.,

Petitioners,

v.

ACTING SECRETARY OF THE PENNSYLVANIA  
DEPARTMENT OF HEALTH,

Respondent.

---

**APPLICATION TO REQUEST CLARIFICATION AND/OR  
PROVIDE MISCELLANEOUS RELIEF**

---

Application to Request Clarification that the Penn Trafford Amicus Curiae  
Brief Complied with the Requirements of Appellate Rule of Civil Procedure  
and/or Provide Miscellaneous Relief in Granting Permission to File

---

Filed on Behalf of Amicus Curiae  
Penn-Trafford School District

Michael T. Kornes Esquire  
Pa. I.D. No. #203742

Christina L. Lane, Esquire  
Pa. I.D. No. #83677

Maiello, Brungo & Maiello, LLP  
424 S. 27<sup>th</sup> St., #210  
Pittsburgh, PA 15203  
412-242-4400

**I. Application To Request Clarification**

1. The above captioned case was originally filed on September 3<sup>rd</sup>, 2021.
2. On September 27<sup>th</sup>, this Court issued an order setting a briefing schedule in this matter, as listed below.

NOW, September 27, 2021, following a status conference in the above matter, and upon agreement of the parties, the Court hereby ORDERS as follows:

1. No later than September 29, 2021, Petitioners shall withdraw their "Application for Special Relief in the Form of an Emergency Preliminary Injunction Under Pa.R.A.P. 1532."
  2. No later than September 29, 2021, Petitioners shall file a reply brief in response to Respondent's brief addressing the limited legal issues previously identified in this Court's September 13, 2021 Order.
  3. No later than September 30, 2021, Petitioners and Respondent shall file respective applications for summary relief. Any responses to these applications shall be filed on or before October 7, 2021. Upon receipt of the applications and responses, the Court will schedule oral argument regarding the same.
3. The Amicus, the Penn-Trafford School District (hereinafter "Penn- Trafford" or "the District"), is a public school district located in Westmoreland County, Pennsylvania. The District believed that the above-captioned case before the Court involved significant issues of public policy as relates to the orderly function of public schools that have not been fully

expressed by the litigants. Therefore, at a public meeting held on October 4, 2021, the Penn- Trafford Board of Directors voted to authorize its Solicitor, Maiello Brungo & Maiello, LLP to file an amicus brief pursuant to Pennsylvania Rule of Appellate Procedure 531(1).

4. Rule 531 of the Pennsylvania Rules of Appellate Procedure States as Follows:

(b)Briefs

(1)Amicus curiae Briefs Authorized.-An amicus curiae may file a brief

(i) **during merits briefing**; (emphasis supplied)

(ii) in support of or against a petition for allowance of appeal, if the amicus curiae participated in the underlying proceeding as to which the petition for allowance of appeal seeks review; **or** (emphasis supplied)

(iii) by leave of court. An amicus curiae does not need to support the position of any party in its brief.

5. As this rule states plainly, an amicus brief may be filed in three circumstances, (1) during merits briefing, (2) on the question of allowance of appeal if the Amicus participated in the underlying action, or (3) by leave of Court.

6. As the rule clearly allows for filing during merits briefing OR by leave of court, leave of court is not required for a brief filed during merits briefing.

7. Rule 531 (b)(4), Time for Filing Briefs, stated that the brief must be filed on or before the date of the filing of the party whose position as to affirmance or reversal the amicus curiae will support.

8. In the above captioned case, this Court ordered that the responses of both parties were due October 7<sup>th</sup>.

9. Penn-Trafford Filed its amicus brief on October 7<sup>th</sup>, which is on the date of the filing of the party whose position the District supported.

10. On October 8<sup>th</sup>, 2021, an electronic message was sent to the undersigned counsel that the “Amicus Curiae Brief” of the Penn Trafford School District was accepted by the Court. Said email is attached as Exhibit A.

11. Since October 8<sup>th</sup>, 2021, the Penn-Trafford School District has been listed as Amicus Curiae on the Docket for this case, and the attorneys for the district have been participants in this case.

12. On November 10<sup>th</sup>, 2021, this Court issued an order and opinion granting the relief sought by the petitioners in this case.

13. Said order included the following footnote, numbered footnote

15.

Further, we note that on October 7, 2021, the Penn-Trafford School District filed the Brief of Amicus Curiae Penn-Trafford School District (Penn-Trafford Amicus Brief) with this Court. However, as Penn-Trafford School District **did not apply for or otherwise request leave** to file an amicus curiae brief in

this matter, the Court did not consider the arguments contained within the Penn-Trafford Amicus Brief. See Pa.R.A.P. 531(b)(1). (emphasis not in original)

14. Said footnote cites Pa.R.A.P 531(b)(1), already discussed above.

15. Penn Trafford and its attorneys believed that, pursuant to Pa.R.A.P 531(b)(1)(i), as the brief was filed before the close of merits briefing, it was in full compliance with Pennsylvania Rules of Appellate Procedure.

16. Said opinion was further supported by the fact that said brief was accepted and docketed by the Court, and that Penn-Trafford is on the docket as an amicus to this day. Additionally, no party has objected to Penn-Trafford's amicus filing.

17. Had this brief been rejected for any reason, Penn-Trafford would have had the opportunity to request relief. Instead, footnote 15 was the only notice to the district that this Court believed that the district had not complied with the Pennsylvania Rules of Appellate Procedure.

18. Respectfully, upon further review of Pa.R.A.P. 531(b)(1), Penn-Trafford believes that as the filing was made before the close of merits briefing, no leave of court was required.

19. Penn-Trafford School District respectfully requests that this Court issue an order stating that the brief filed by the District on October 7<sup>th</sup>, 2021 was compliant with the Pennsylvania Rules of Appellate Procedure or provide the miscellaneous relief in permitting the Penn-Trafford School District to seek leave of court to file the Amicus brief.

#### **IV. CONCLUSION**

For the foregoing reasons, Amicus Curiae, The Penn-Trafford School District, respectfully requests that this Honorable Court grant the relief above and clarify that the Amicus Brief filed by the district in the above captioned matter complied with the Pennsylvania Rules of Appellate Procedure.

Respectfully Submitted,

MAIELLO, BRUNGO & MAIELLO, LLP

/s/Michael T. Kornes Esquire

Michael T. Kornes, Esquire

Pa. I.D. 203742

Christina L. Lane, Esquire

Pa. I.D. #83677

**CERTIFICATE OF SERVICE**

I, Michael T. Korn, the undersigned, hereby certify that on this 7<sup>th</sup> day of October 2021, true and correct copies of the foregoing **APPLICATION FOR CLARIFICATION AND/OR PROVIDE MISCELLANEOUS RELIEF** have been served via the Court's Electronic Case Filing System, email transmission:

/s/ Michael T. Korn  
Michael T. Korn, Esq.  
Pa. I.D. #203742  
Christina L. Lane, Esq.  
Pa. I.D. # 83677  
Maiello, Brungo & Maiello, LLP  
SouthSide Works  
424 S. 27<sup>th</sup> St., #210  
Pittsburgh, PA 15203

Dated: November 12, 2021

**CERTIFICATE OF COMPLIANCE**

I, the undersigned, hereby 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/ Michael T. Korn  
Michael T. Korn, Esq.  
Pa. I.D. #203742  
Christina L. Lane, Esq.  
Pa. I.D. # 83677  
Maiello, Brungo & Maiello, LLP  
SouthSide Works  
424 S. 27<sup>th</sup> St., #210  
Pittsburgh, PA 15203