

MICHAEL DALEY, ESQUIRE
Attorney I.D. Pa. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. No. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, <i>et al.</i>	:	
	:	
<i>Petitioners</i>	:	
	:	NO. 4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents</i>	:	
	:	

Notice to Plead

To: Amy McFalls, Jason Crunetti, Vincent Esposito, Gregory Jackson, and Brenda Lacy
c/o John J. Grogan, Esquire
David A. Nagdeman, Esquire
Langer, Grogan & Diver P.C.
1717 Arch St., Ste 4020
Philadelphia, PA 19103

You are notified to plead to the enclosed Preliminary Objections within 30 days of service or a judgment may be entered against you.

s/Michael Daley, Esquire
Michael Daley, Esquire

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, *et al.* :
 :
 Petitioners : NO. 4 MD 2021
 :
 v. :
 :
 38th JUDICIAL DISTRICT, *et al.* :
 :
 Respondents :
 :
 _____ :

Order

AND NOW, this _____ day of _____, 2021,
upon consideration of Respondents the 38th Judicial District, the
Honorable Thomas M. Del Ricci, and Michael R. Kehs, Esquire’s
Preliminary Objections to the Petition for Review, and Petitioners’
response, it is **ORDERED** that the Preliminary Objections are
SUSTAINED.

The claims against Respondents the 38th Judicial District, the
Honorable Thomas M. Del Ricci, and Michael R. Kehs, Esquire are
DISMISSED with prejudice.

J.

MICHAEL DALEY, ESQUIRE
Attorney I.D. Pa. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. No. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, <i>et al.</i>	:	
	:	
<i>Petitioners</i>	:	
	:	NO. 4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents</i>	:	
	:	

**Respondents the 38th Judicial District,
the Honorable Thomas M. Del Ricci, and Michael R. Kehs,
Esquire’s Preliminary Objections to the Petition for Review**

Respondents the 38th Judicial District, the Honorable Thomas M. Del Ricci, and Michael R. Kehs, Esquire object to the Petition for Review pursuant to Pa.R.C.P. 1028(a) on the following grounds:

1. This class action concerns the alleged imposition of duplicative court costs against Petitioners and other proposed class individuals as part of their criminal convictions and sentences in

underlying criminal cases in the Court of Common Pleas of Montgomery County.

2. Respondents filing these objections are the 38th Judicial District of Pennsylvania, the Honorable Thomas M. Del Ricci, President Judge of the Court of Common Pleas of Montgomery County, and the Court Administrator for the Court of Common Pleas, Michael R. Kehs, Esquire (“Judicial Respondents”).

3. President Judge Del Ricci and Court Administrator Kehs are sued in their official capacities only. Hence, the claims against them are against the Court of Common Pleas, the 38th Judicial District.

4. Judicial Respondents are entities of the Unified Judicial System of Pennsylvania.

5. Co-respondent is Lori Schreiber, the Clerk of Courts for Montgomery County.

6. Petitioners claim that Judicial Respondents violated various federal and state constitutional rights by docketing and assessing duplicative court costs arising from criminal convictions, and seek the following declaratory and injunctive relief:

- a. a declaration that imposing costs on multiple charges in a single criminal proceeding is unlawful, and such costs against Petitioners are null and void;
- b. a declaration that a court cannot impose costs on a criminal defendant unless it provides a bill of costs to defendant and counsel at sentencing;
- c. injunctive relief to include ceasing the imposition and collection of such costs, including voiding outstanding balances;
- d. an injunction ordering Judicial Respondents to develop various programs for the itemization and production of any court costs prior to sentencing; and
- e. an injunction ordering Judicial Respondents to notify credit reporting agencies of adjustments to credit reports of the proposed class.

7. As will be set forth more fully in Judicial Respondents' brief, Petitioners' request for relief asks this Court to invalidate the discretion of sentencing judges to determine whether a case involves more than

one criminal episode, and whether duplicative costs are permitted on a case-by-case basis.

8. Indeed, the “policy” that Petitioners base their claim on is that Judicial Respondents “allow” judges in their judicial discretion in individual cases to impose duplicative costs.

9. Petitioners’ request for relief is improper because they have an adequate remedy at law in their respective criminal cases to challenge any cost they believe is improper.

10. Petitioners’ request for relief is improper because it collaterally attacks criminal sentences by seeking to reverse, modify, or both, judicial decisions and orders in criminal cases.

11. The Petition fails to set forth a viable claim that Judicial Respondents’ actions are inconsistent with or in excess of their judicial and administrative duties.

12. The Petition fails to set forth a viable Equal Protection or Due Process claim.

13. Petitioners request for relief is prohibited in part by the doctrine of *Heck v. Humphrey*.

14. The Petition fails to state a claim for relief under the Pennsylvania Constitution.
15. Sovereign immunity precludes the state claims that seek to compel Judicial Respondents to take action.
16. Petitioners lack standing to bring this class action.
17. The Petition fails to state a class action claim for the reasons set forth above, including having an adequate remedy at law and failure to meet Rule of Civil Procedure 1702's requirements.
18. Judicial Respondents may raise additional reasons in their brief supporting these Objections.

WHEREFORE, Judicial Respondents respectfully request this Honorable Court to grant their Preliminary Objections and dismiss the claims against them with prejudice.

Respectfully submitted,

s/Michael Daley, Esquire

Michael Daley, Esquire
Nicole Feigenbaum, Esquire

***ATTORNEYS FOR RESPONDENTS THE
38TH JUDICIAL DISTRICT, THE
HONORABLE THOMAS M. DEL RICCI,
AND MICHAEL R. KEHS, ESQUIRE***

MICHAEL DALEY, ESQUIRE
Attorney I.D. Pa. 77212
NICOLE FEIGENBAUM, ESQUIRE
Attorney I.D. No. 319765
Administrative Office of PA Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Phone: (215) 560-6326 Fax: (215) 560-5486

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

AMY MCFALLS, <i>et al.</i>	:	
	:	
<i>Petitioners</i>	:	
	:	NO. 4 MD 2021
v.	:	
	:	
38th JUDICIAL DISTRICT, <i>et al.</i>	:	
	:	
<i>Respondents</i>	:	

Certificate of Service

The undersigned certifies that on *February 4, 2021*, he caused a copy of the foregoing *Preliminary Objections* to be served via PACfile on counsel of record and via U.S. first-class, postage prepaid mail on:

Lori Schreiber, Clerk of Courts
2 East Airy Street
PO Box 311
Norristown, PA 19404

s/Michael Daley, Esquire
Michael Daley, Esquire