

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

ARTHUR ALAN WOLK

vs.

NO. 2016-01839

THE SCHOOL DISTRICT OF LOWER MERION

COVER SHEET OF MOVING PARTY

Date of Filing November 18, 2020

Moving Party PHILIP BROWNDIES; CATHERINE MARCHAND; ARTHUR ALAN WOLK

Counsel for Moving Party ARTHUR A WOLK, Esq., ID: 2091

Document Filed (Specify) PLAINTIFFS' MOTION FOR RULE TO SHOW CAUSE WHY THE LOWER MERION SCHOOL DISTRICT SHOULD NOT BE HELD IN CONTEMPT OF DECISION AND ORDER OF JUDGE JOSEPH SMYTH DATED AUGUST 29, 2016; THAT AN INVESTIGATING GRAND JURY BE EMPANELED AND THAT JUDGE ROGERS RECUSE HIMSELF

Matter is: (Appealable) | (Interlocutory)

Discovery Needed: (Yes) | (No)

If applicable, Civil Case Management Order Discovery Deadline: _____

CERTIFICATIONS - Check **ONLY** if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. **(Required by Local Rule 208.2(e) on motions relating to discovery.)**

Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check **ONE** of the Choices Listed Below:

_____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____, 20____.

_____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____, 20____ at **1:00 p.m.** at **321 Swede Street, Norristown, PA.**

_____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

_____ Rule Returnable at time of trial.

By: _____
Court Administrator

ARTHUR ALAN WOLK, PHILIP BROWNDDEIS	:	MONTGOMERY COUNTY
and CATHERINE MARCHAND,	:	COURT OF COMMON PLEAS
	:	
Plaintiffs for Themselves and All School	:	
Taxpayers to The School District of Lower	:	NO. 2016-01839
Merion,	:	
	:	
v.	:	
	:	JURY TRIAL DEMANDED
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of Plaintiffs’ Motion for Rule to Show Cause why the Lower Merion School District should not be held in Contempt of the Decision and Order of Judge Joseph Smyth, dated August 29, 2016; that an investigating Grand Jury be empaneled and that Judge Rogers recuse himself is GRANTED.

IT IS FURTHER ORDERED:

1. The School District of Lower Merion, its administrators and lawyers are hereby held in contempt of the Decision and Order of Judge Smyth.
2. The School District of Lower Merion, its Administrators and Lawyers shall pay \$100,000 day for each day they do not comply with Judge Smyth’s Decision and Order.
3. The \$22 million put aside to reimburse the taxpayers of Lower Merion shall be immediately returned to the taxpayers.

4. An investigating Grand Jury shall be empaneled to investigate the fraud committed by the Lower Merion School District, its Administrators and Lawyers from 2005 to the present, and to issue indictments for those found to have perpetrated, advised, or sanctioned such theft.

5. Judge Rogers shall recuse himself from any other participation in this case for having permitted the defense by not rejecting its letter out of hand the appearance of impropriety by thus allowing himself to be used as a pretext for contemptuous conduct.

6. The Commonwealth Court shall assign a judge from a neighboring county to handle all matters relating to this case in the future due to the foregoing.

BY THE COURT

J.

THE WOLK LAW FIRM
Arthur Alan Wolk, Esquire
Identification No. 02091
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Office: (215) 545-4220
Cell: (610) 733-4220
Attorney for Plaintiffs/Pro Se

ARTHUR ALAN WOLK, PHILIP BROWNDIES : MONTGOMERY COUNTY
and CATHERINE MARCHAND, : COURT OF COMMON PLEAS
:
Plaintiffs for Themselves and All School :
Taxpayers to The School District of Lower : NO. 2016-01839
Merion, :
v. :
: JURY TRIAL DEMANDED
THE SCHOOL DISTRICT OF LOWER MERION, :
:
Defendant. :

**PLAINTIFFS’ MOTION FOR RULE TO SHOW CAUSE WHY THE LOWER MERION
SCHOOL DISTRICT SHOULD NOT BE HELD IN CONTEMPT OF THE DECISION
AND ORDER OF JUDGE JOSEPH SMYTH DATED AUGUST 29, 2016;
THAT AN INVESTIGATING GRAND JURY BE EMPANELED AND THAT
JUDGE ROGERS RECUSE HIMSELF**

Plaintiffs respectfully file this motion for rule to show cause, and in support thereof state the following:

1. On August 29, 2016, Judge Joseph Smyth, after trial and the taking of testimony held that:

The board of the School District shall, not later than its next scheduled meeting, adopt a resolution revoking the tax increase of 4.44% for fiscal year 2016-17, and enacting a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16.

A copy of that decision and Order is attached and marked as Exhibit A.

2. That Decision and Order was appealed to the Commonwealth Court who promptly, decisively and correctly dismissed the appeal for the District's failure to file post-trial motions.

3. Inexplicably the Pennsylvania Supreme Court granted certiorari and reversed the Commonwealth Court's dismissal ordering instead a decision on the merits of the appeal.

4. After argument, the Commonwealth Court doubled-down on its earlier decision and held that:

General Rules of Administrative Practice and Procedure (GRAPP) does not create substantive rights. It governs the procedures for conducting hearings that are created by statute. Neither the Taxpayer Relief Act nor the Administrative Agency Law create a hearing for challenging the School District's

legerdemain in yearly projecting multimillion-dollar deficits in documents required by law to be published to the voters and/or filed with the Commonwealth and not disclosing that contrary to projections the District every year experienced multimillion dollar surpluses[.]

We further conclude that the trial court had jurisdiction to issue the preliminary injunction because neither the School Code nor the Local Agency Law provide a statutory remedy to correct the alleged misconduct of the School District. Likewise, the Taxpayer Relief Act provides no statutory appeal from the Department's approval of a referendum exception. We reject the claim of the School District that the doctrine of exhaustion of administrative remedies barred the trial court's preliminary injunction.

A copy of the Commonwealth Court's Decision is attached and marked Exhibit B.

5. The District filed another Petition for Certiorari to the Supreme Court of Pennsylvania and was denied on October 15, 2020.

6. During all of this litigation, the Auditor General of the Commonwealth of Pennsylvania did his own investigation, and found for five years he studied the School District of Lower Merion stole the people's money by claiming it was taxing for current needs when it had put together an elaborate scheme of false accounts into which it illegally poured the surpluses its

illegal taxes had accrued, never intending to spend the money and then taxing again for the same unpaid expense. A copy of the report of the Auditor General is attached and marked Exhibit C.

7. What did the District do after being caught once again red-handed stealing from the people? They concocted a new scheme. Instead of asking the Pennsylvania Department of Education for exceptions to raise taxes above the state mandated index maximum, they instead doubled down and so grotesquely inflated expenses and understated income such that they accumulated in just the last two years some 40 million dollars more in illegal surpluses. In short, the District, its administrators and lawyers don't get it!

8. The District then filed a Motion for Stay proceedings which was denied by Judge Garret Page on October 20, 2020. (ECF No. 00128)

9. Faced with the prospect of having to reduce taxes in accordance with the injunction issued by Judge Smyth, and returning the now \$22 million held separately as a result of this lawsuit, suddenly and without following any Montgomery County Rule, without following any known procedure, without any step taken under the law, defense counsel wrote not to Judge Garret Page, who just ruled against the District, but instead Judge Rogers. A copy of which letter is attached and marked Exhibit D.

10. Plaintiffs' counsel, stunned at the blatant effort to end run Judge Page, but not surprised, wrote to Judge Rogers a copy of which is attached and marked Exhibit E asking why all of a sudden without any colorable attempt at following any Rule of Court, the defense felt comfortable just picking a judge out of a hat to address its effort to end run Judge Page's decision.

11. Judge Rogers, citing no reason under the law, wrote back saying that somehow Covid-19 was the culprit, and the Court would get to this case under Phase IV sometime in the future even though there was nothing before the Court, nothing to be decided, nothing but an

unethical letter to Judge Rogers by the defense which should have been rejected out of hand by Judge Rogers.

12. Judge Rogers issued no stay, did not overturn Judge Page's decision, did not put a halt to the injunction nor could he have legally done so, just explained that Covid-19 had turned the courts of Montgomery County upside down, and further proceedings might have to wait.

13. At the next regularly scheduled meeting of the Lower Merion School District, in blatant disregard of the Orders of both Judge Smyth, The Commonwealth Court, and Judge Garret, Page, the District used Judge Rogers letter as an excuse to refuse to roll back the tax increase as ordered by a mandatory injunction, a copy of which is attached and marked Exhibit F.

14. The conduct of the Lower Merion School District is contumacious, illegal, arrogant and shows a complete contempt for the law, the decisions of the Courts of the Commonwealth and this Court, and justifies only the harshest sanction.

15. It is one thing to steal the hard earned money of the people of Lower Merion and Narberth, it is another thing to ignore the mandate of the Commonwealth Court, it is another thing to ignore an exhaustive investigation by the Auditor General who, like Judge Smyth found what amounts to theft and fraud; it's another thing to ignore the order of a coordinate Montgomery County Judge, who refused a stay, but it is quite another act of unethical and outrageous behavior to pick a judge out of the blue to ask a favor to intervene over the rulings of both a colleague from the same court and the appellate courts to use as an excuse, without any order whatsoever, to act in contempt of an injunction.

16. Not only is that conduct impropriety, and the appearance of impropriety, it is blatantly illegal judge shopping not to mention recidivist theft.

17. The District, by its own admission has \$22 million set aside to repay the taxpayers for at least four years of its theft.

18. That money belongs to the taxpayers and must be returned at once.

19. But that is not enough for this contempt, the District, its administrators and lawyers should be fined \$100,000 a day until the money is paid in full.

20. Only then may the District and its lawyers understand that the blatant disregard of the law and the decisions of this Court will not be tolerated, and its recidivist theft must cease.

21. Accordingly, and for reasons stated in the accompanying brief, the Plaintiffs request the following relief:

An Order holding the School District of Lower Merion, its Administrators and Lawyers in contempt of the Decision and Order of Judge Smyth.

An Order directing that the School District of Lower Merion, its Administrators and Lawyers be ordered to pay \$100,000 day for each day they do not comply with Judge Smyth's Decision and Order.

An Order directing that the \$22 million put aside to reimburse the taxpayers of Lower Merion be immediately returned to the taxpayers.

An Order directing that an investigating Grand Jury be empaneled to investigate recidivist fraud committed by the Lower Merion School District, its Administrators and Lawyers from 2005 to the present, and to issue indictments for those found to have perpetrated, advised, or sanctioned such theft.

An Order recusing Judge Rogers from any other participation in this case for having permitted the defense by not rejecting its letter out of hand the appearance of impropriety by thus allowing himself to be used as a pretext for contemptuous conduct.

An Order requesting the Commonwealth Court to assign a judge from a neighboring county to handle all matters relating to this case in the future due to the foregoing.

Respectfully submitted,

THE WOLK LAW FIRM

By: /s/ Arthur Alan Wolk
Arthur Alan Wolk, Esquire (02091)
Attorney for Plaintiffs/Pro Se

Dated: November 18, 2020

VERIFICATION

Arthur Alan Wolk states that he is a Plaintiff in this action and verifies that the statements made in the foregoing Motion for Rule to Show Cause are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.



Arthur Alan Wolk

Date: November 18, 2020

CERTIFICATE OF SERVICE

I, Arthur Alan Wolk, hereby certify that on November 18, 2020, a true and correct copy of *PLAINTIFFS' MOTION FOR RULE TO SHOW CAUSE WHY THE LOWER MERION SCHOOL DISTRICT SHOULD NOT BE HELD IN CONTEMPT OF THE DECISION AND ORDER OF JUDGE JOSEPH SMYTH DATED AUGUST 29, 2016; THAT AN INVESTIGATING GRAND JURY BE EMPANELED AND THAT JUDGE ROGERS RECUSE HIMSELF* was served via electronic mail and the Court's ECF system, upon the following:

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THE WOLK LAW FIRM

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