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ATLANTIC COUNTY PROSECUTOR WILLIAM E. REYNOLDS, Plaintiff, v. COUNTY OF ATLANTIC and DENNIS LEVINSON, in his official capacity as ATLANTIC COUNTY EXECUTIVE, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CIVIL PART ATLANTIC COUNTY Docket No. ATL-L-117-26 Civil Action **DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S ORDER TO SHOW CAUSE**

PRELIMINARY STATEMENT

For ease of reference, Plaintiff Atlantic County Prosecutor William E. Reynolds shall be referred to as "the Prosecutor" throughout the Opposition of Defendants.

LEGAL ARGUMENT

POINT I

THERE ARE NO VALID LEGAL GROUNDS THAT ALLOW THE PROSECUTOR TO PROCEED WITH THIS MATTER "UNDER SEAL" AND THE PROSECUTOR'S MOVING PAPERS ARE DEVOID OF THE REQUISITE SHOWING OF GOOD CAUSE TO "SEAL" THE RECORD IN THIS MATTER, EVEN ON A TEMPORARY BASIS.

The Prosecutor publicly filed the Moving Papers in this matter. Yet, in no less than two (2) places, the Prosecutor seeks to have this matter proceed "under seal."

In Paragraph (f) of the Prosecutor's Prayer for Relief in his Verified Complaint uploaded on January 16, 2026, the Prosecutor "**demands an Order declaring that**":

> **This matter shall be under seal** until such a time the Court deems appropriate.

(Emphasis added).

Similarly, in Paragraph 6(f) of the Prosecutor's Proposed Final Order submitted to this Court on January 16, 2026, as part of his affirmative relief, the Prosecutor requests:

> **This matter shall be under seal** until such a time the Court deems appropriate.

(Emphasis added).

Sealing is discussed at R. 1:2-1(c), which provides:

> If a proceeding is required to be conducted in open court, **no record of any portion thereof shall be sealed by order of the court except for good cause shown**, as defined by R. 1:38-11(b), which shall be set forth on the record. Settlement conferences may be heard at the bench or in chambers.

(Emphasis added).

R. 1:38-11 provides, in part:

> a. **Information in a court record may be sealed by court order for good cause** as defined in paragraph (b) or subparagraph (e)(2) for the temporary sealing of a Complaint-Warrant (CDR-2). **The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists**.
>
> b. **Good cause to seal a record** except as provided in subparagraph (e)(2) **shall exist when**:
>
> 1. Disclosure will likely cause a clearly defined and serious injury to any person or entity; and
>
> 2. The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

(Emphasis added).

The Moving Papers of the Prosecutor are devoid of the requisite "good cause" necessary to proceed "under seal". Neither Defendant supports this application to proceed "under seal". Rather, both Defendants vehemently oppose proceeding "under seal." Neither Defendant seeks to hide any information from the residents, taxpayers, or voters of Atlantic County.

POINT II

ASPECTS OF THE PROSECUTOR'S APPLICATION ARE MOOT.

Published reports indicate that the Prosecutor has already filed paperwork to dismiss the criminal prosecutions of LaQuetta Small and Constance Days-Chapman. Those published reports seem to indicate that paperwork to dismiss was filed prior to this application being uploaded with the Court.

The Moving Papers are devoid of any contention that the decisions to dismiss the prosecutions of LaQuetta Small and/or Constance Days-Chapman were based on the actions of Defendants or Defendants' agents.

It is well established that questions that have become moot or academic prior to judicial scrutiny generally have been held to be an improper subject for judicial review. Oxfeld v. New Jersey State Board of Education, 68 N.J. 301, 303-304 (1975); In re Geraghty, 68 N.J. 209, 212-213 (1975); Sente v. Clifton, 66 N.J. 204, 206 (1974). For reasons of judicial economy and restraint, courts will not decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete adversity of interest. Id. at 437.

Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Jackson v. Department of Corrections, 335 N.J.Super. 227, 231 (App. Div. 2000). "A case is technically moot when the original issue presented has been resolved, at least concerning the parties who initiated the litigation." DeVesa v. Dorsey, 134 N.J. 420, 428 (1993)(Pollock, J., concurring) (citing Oxfeld at 303 (1975)). To restate, "'an issue is "moot" when the decision sought in a matter, when rendered, can

have no practical effect on the existing controversy.'" Greenfield v. New Jersey Department of Corrections, 382 N.J.Super. 254, 257-58 (App.Div.2006) (quoting N.Y. S. & W. R. Corp. v. State Department of Treasury, Division of Taxation, 6 N.J.Tax 575, 582 (Tax Ct.1984)). "It is firmly established that controversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed." Cinque v. New Jersey Department of Corrections, 261 N.J.Super. 242, 243 (App. Div. 1993).

In the case at bar, Mayor Marty Small was acquitted and any comments by the County Executive were post-acquittal. Moreover, the criminal prosecutions of LaQuetta Small and Constance Days-Chapman were dismissed prior to filing the current matter and the Moving Papers are devoid of any indication that the Prosecutor's decision to dismiss was in any manner influenced by any comment or comments of the County Executive thereby mooting the issue. The Prosecutor has offered no other example of Defendants allegedly doing anything improper on any case other than the criminal prosecutions of LaQuetta Small and Constance Days-Chapman. Thus, the Prosecutor's application fails, in part, based on mootness.

POINT III

ASPECTS OF THE PROSECUTOR'S APPLICATION ARE NOT RIPE FOR JUDICIAL DETERMINATION.

Atlantic County's 2026 budget has yet to be formally adopted. (See Certification of Tammi Robbins). The Atlantic County Prosecutor's Office ("ACPO") is operating under a temporary budget until final adoption. (See Certification of Tammi Robbins).

The proposed 2026 budget of the ACPO did not contain a request for an independent outside attorney. (See Certification of Tammi Robbins). The Prosecutor can certainly submit an amended budget for the County's consideration that could include the expense of an independent outside attorney. (See Certification of Tammi Robbins).

Let it be clear. The County is not denying the Prosecutor the ability to hire an independent outside attorney. Rather, the County is only indicating that if the Prosecutor desires to hire such an individual, he must do so within his own 2026 budget. Since that budget has not been adopted, the application by the Prosecutor that he has been denied such an independent outside attorney is not yet ripe.

A case's ripeness depends on two factors: " '(1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time.' " K. Hovnanian Construction of N. Central Jersey, Inc. v. New Jersey Department of Environmental Protection, 379 N.J.Super. 1, 9–10, (App.Div.2005) (quoting 966 Video, Inc. v. Mayor & Township Committee of Hazlet Township, 299 N.J.Super. 501, 515–16, 691 A.2d 435 (Law Div.1995).

To the extent that the Prosecutor's application seeks to have the County fund an independent attorney outside the Prosecutor's 2026 budget, then said issue is ripe for

determination and Defendants rely upon this Opposition Brief and all accompanying Certifications to address that argument.

POINT IV

ASPECTS OF THE PROSECUTOR'S CERTIFICATON ARE VIOLATIVE OF R. 4:6-4(b) AND MUST BE STRICKEN.

Pursuant to R. 4:6-4(b):

> (b) Impropriety of Pleading. **On** the court's or **a party's motion, the court may either** (1) dismiss any pleading that is, overall, **scandalous, impertinent, or, considering the nature of the cause of action, abusive of** the court or **another person**; or (2) **strike any such part of a pleading or any part thereof that is immaterial** or redundant. The order of dismissal shall comply with R. 4:37-2(a) and may expressly require, as a condition of the refiling of a pleading asserting a claim or defense based on the same transaction, the payment by the pleading party of attorney's fees and costs incurred by the party who moved for dismissal.

R. 4:6-4(b). (Emphasis added).

In 1971, Judge Brown discussed a predecessor to R. 4:6-4(b) as follows:

> Defendants have reacted with a demand that it should be stricken or impounded because it is 'so grossly scandalous'. . . The precise objection is that the allegations amount to 'false and scurrilous vilification.' The quality of plaintiff's allegations cannot be tested by the pending motion wherein all well-pleaded facts must be accepted as true. No matter how the language may vilify defendants**, it will not be 'scandalous' within the meaning of the cited rule unless it is irrelevant**. Everything that plaintiffs say in the amended complaint is relevant to the subject of their grievance. There is no justification for striking or impounding the complaint.

DeGroot v. Muccio, 115 N.J. Super. 15, 19 (Law Div. 1971). (Emphasis added). (internal citations omitted).

It must be remembered that in DeGroot, Plaintiff sued several Defendants who participated in his prosecution for murder. Likewise, in Calliari v. Super, 180 N.J. Super. 423 (Ch. Div. 1980), Judge Haines observed:

> Defendant's motion also seeks to strike certain words from the complaint on the ground that they are scandalous. The words are: "Defendant, by his criminal, immoral, unconscionable and outrageous acts of killing his wife and burying her on the premises which plaintiffs were in the process of purchasing and where they had hoped to reside. . ." It is these alleged acts of defendant, described in these terms, upon which plaintiffs base their suit; consequently, the words are not irrelevant and [the Rule] which permits the striking of scandalous words, does not apply.

Calliari at 430.

In Paragraph 5 of his Certification, the Prosecutor references Joseph Jacobs as being relevant to this matter as well as the pending criminal prosecution of Mr. Jacobs' son by the Atlantic County Prosecutor's Office ("ACPO"). Defendants submit same is impertinent.

In Paragraph 8, the Prosecutor certifies that "Joe Jacobs and his family members have essentially run the Atlantic City School [D]istrict since the mid-1990s". Yet, in Paragraph 6 of his Certification, the Prosecutor certified that "the conflict described herein arose immediately following the verdict in the matter of State v. Marty Small", which Paragraph 7 of the Certification tells us occurred on December 18, 2025. Considering "the nature of the cause of action" occurred on December 18, 2025, it certainly begs the question of the relevancy of the operation of the Atlantic City School District since the mid-1990s.

Paragraph 6 of the Prosecutor's Certification also references India Still, a respected public servant, Tracy Reilly, a respected member of the New Jersey Bar, and Melissa Rosenblum, a respected member of the New Jersey Bar, a Former President of the Atlantic County Bar Association, and President of the Board of Directors for Jewish Family Services, a leading philanthropic organization in the area. (See Certification of Defendant Levinson).

Other than that Paragraph in the Prosecutor's Certification, these well-respected prominent women are not mentioned again in either the Prosecutor's Moving Brief or the Prosecutor's Verified Complaint. It certainly begs the question whether the filings of the Prosecutor were done as a means of being abusive to these three professional women so that his besmirching of them would not be actionable under the guise of the litigation privilege.

The litigation privilege applies to any communication that is:

1. Made in judicial or quasi-judicial proceedings;
2. By litigants or other participants authorized by law;
3. To achieve the objects of the litigation; and
4. That has some connection or logical relation to the action.

See Williams v. Kenney, 379 N.J.Super. 118, 134 (App. Div. 2005). Whether the privilege applies is a question of law for the court to decide. Id. The general policy behind the privilege is to protect jurors, witnesses, parties and their representatives from defamation liability because of statements made during judicial proceedings. Id. It is

based on the need for unfettered expression critical to advancing the underlying government interest at stake in such proceedings. Id. at 133.

Paragraphs 17 and 18 of the Prosecutor's Certification again refer to the case of State v. Harris Jacobs. Yet, none of the telephone calls at issue in this matter, the text at issue in this matter, and none of County Executive's public statements at issue in this matter reference State v. Harris Jacobs. Defendants submit same are impertinent.

The Court should compel the redaction of the Prosecutor's Certification in these areas before considering the merits of his application.

POINT V

ASPECTS OF THE PROSECUTOR'S CERTIFICATON ARE CLEARLY NOT BASED ON HIS PERSONAL KNOWLEDGE AND SHOULD BE STRICKEN.

Under the New Jersey Court Rules, a Certification can substitute for and be the equivalent of an affidavit. Specifically, R. 1:4-4(b) provides:

> Certification in Lieu of Oath. **In lieu of the affidavit**, oath, or verification required by these rules, the affiant may submit the following certification, which shall be dated and immediately precede the affiant's signature: **"I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."**

(Emphasis added).

R. 1:6-6 provides:

> If a motion is based on facts not appearing of record, or not judicially noticeable, the court may hear it on **affidavits made on personal knowledge**, setting forth only facts which are admissible in evidence to which the affiant is competent to testify and which may have annexed thereto certified copies of all papers or parts thereof referred to therein. The court may direct the affiant to submit to cross-

> examination or hear the matter wholly or partly on oral testimony or depositions.

(Emphasis added).

In Paragraph #2 of his Certification, the Prosecutor states:

> The facts stated herein are based upon my personal knowledge, **my official duties, contemporaneous memoranda, documents maintained by office, and information obtained from reliable and open sources in the ordinary course of my responsibilities**.

(Emphasis added).

That Paragraph evidences the Prosecutor's own admission that his Certification is non-compliant with the Court Rules set forth above.

In Paragraph 8, the Prosecutor certifies that "Joe Jacobs and his family members have essentially run the Atlantic City School [D]istrict since the mid-1990s". It is highly suspect whether that sentence can be deemed based on the Prosecutor's "personal knowledge." (See Certification of Defendant Levinson).

Similarly, in Paragraph #5 of his Certification Frank Barbera is identified as "an employee of, or otherwise works for, Joseph Jacobs." Absent being in possession of the 2025 payroll records or similar records of Jospeh Jacobs, such a statement seems speculative at best. (See Certification of Defendant Levinson).

POINT VI

ASPECTS OF THE PROSECUTOR'S VERIFIED COMPLAINT ARE NOT FACTS ADMISSIBLE INTO EVIDENCE AND ARE CERTAINLY NOT BASED ON PERSONAL KNOWLEDGE AND SHOULD BE STRICKEN.

R. 1:4-7 provides:

> Pleadings need not be verified unless *ex parte* relief is sought thereon or a rule or statute otherwise provides. The verification shall not repeat the allegations of the pleadings but may incorporate them by reference **if made on personal knowledge and so stated**, **and the allegations are of facts admissible in evidence** to which the affiant is competent to testify.

(Emphasis added).

The Prosecutor opted to proceed in a manner that required a Verified Complaint. Given his selection, he should be required to comply with the Court Rules when it comes to Verification.

The Prosecutor has posited the following as statements of fact, when, they are unsubstantiated conclusions of law masked as statements of fact:

a. Count 1, Paragraph 12;

b. Count 1, Paragraph 13;

c. Count 1, Paragraph 14;

d. Count 1, Paragraph 15;

e. Count 1, Paragraph 16;

f. Count 1, Paragraph 17;

g. Count 2, Paragraph 32;

h. Count 2, Paragraph 33;

i. Count 2, Paragraph 35;

j. Count 2, Paragraph 36;

k. Count 2, Paragraph 37;

l. Count 3, Paragraph 39;

m. Count 3, Paragraph 40;

n. Count 3, Paragraph 41;

o. Count 3, Paragraph 43;

p. Count 3, Paragraph 44;

q. Count 4, Paragraph 45; and

r. Count 4, Paragraph 47:

The Court should require the Prosecutor to file an Amended Verified Complaint that complies with the New Jersey Court Rules before the Court considers the application on its merits.

POINT VII

COUNT 1 OF THE PROSECUTOR'S VERIFIED COMPLAINT IS NOT A RECOGNIZABLE CAUSE OF ACTION.

R. 4:5-7 provides:

> Each allegation of a pleading **shall be simple, concise and direct**, and no technical forms of pleading are required. All pleadings shall be liberally construed in the interest of justice.

(Emphasis added).

Count 1 of the Prosecutor's Verified Complaint is entitled "Prosecutorial Independence." It contains seven (7) paragraphs. Yet, it seeks no specific relief.

Defendants are left to speculate as to what relief is being sought. One possibility is that the Prosecutor is seeking a Declaratory Judgment that the Prosecutor is a Constitutional Officer.

N.J.S.A. 2A:16-53 provides:

> A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

To the extent that is all the Prosecutor is seeking by Court 1, Defendants can admit as to same.

Otherwise, R. 4:6-4(a) provides:

> **More Definite Statement.** If a responsive pleading is to be made to **a pleading which is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading**, the party may move for a **more definite statement before interposing a responsive pleading**. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court not complied with within 10 days after notice of the order or within such other time as the court fixes, the court may strike the pleading to which the motion was directed or make such order as it deems appropriate. The statement shall become a part of the pleading which it supplements.

(Emphasis added).

Defendants should not be made to answer such a vague and ambiguous cause of action in its current form.

POINT VIII

COUNT 4 OF THE PROSECUTOR'S VERIFIED COMPLAINT IS NOT A RECOGNIZABLE CAUSE OF ACTION.

Like Count 1 of the Prosecutor's Verified Complaint, Count 4 does not seem to contain a cause of action. Rather, Count 4 seems to merely contain the Prosecutor's Crowe v. DeGioia analysis as to why a temporary injunction is necessary. That is the exact reason why a Legal Brief is required on all Orders to Show Cause so that one sets forth his or her analysis under Crowe v. DeGioia. However, Crowe v. DeGioia is not a separate cause of action.

Defendants should not be made to answer such a vague and ambiguous cause of action, which is nothing more than the Legal Argument of the Prosecutor that should have been placed in Brief as opposed to inserted within his Verified Complaint.

POINT IX

THE PROSECUTOR CLAIMS INQUIRIES BY THE COUNTY EXECUTIVE INTO COSTS, OVERTIME AND MANPOWER CONSTITUTE INTERFERENCE WHEN GOVERNING STATUTES SUPPORT SUCH INQUIRIES AS PART OF THE COUNTY EXECUTIVE'S CORE RESPONSIBILITIES TO TAXPAYERS.

Central to the Prosecutor's Verified Complaint is the allegation that any inquiry by the County into his use of resources equates to interference of his position as a Constitutional Officer. (*See* Paragraph 3, Verified Complaint). The County Executive is the CEO of Atlantic County. One of his responsibilities is to oversee the public budget. This includes the budget of the ACPO. N.J.S.A. 40:26–1 deals with Board of County Commissioners, and that statute makes clear that the County Government manages the property, finances and affairs of the County. Further, N.J.S.A. 40A:4–57 (Local Budget Law) establishes that expenditures cannot exceed appropriations. As such, the County Executive has a duty to monitor overtime and expenses of each Department to ensure that operations of each fall within their respective budgets.

What the Prosecutor has done in his pleadings is conflate "accountability" with "interference". The Prosecutor is seeking a Court Order which will remove the County Executive from his important role in ensuring accountability. Stated differently, the Prosecutor wants this Court to remove the statutory checks and balances as set forth by the New Jersey Legislature. While the Prosecutor has the independent authority to charge crimes, he does not have independent authority to spend unlimited funds without oversight. This Court should not allow that to happen.

It is important to recognize that the County has not refused or restricted any public funds to the ACPO. The budget process for 2026 is ongoing and the County encourages the Prosecutor and his Executive Team to continue in that process. As

such, the case of In re Bigley, 55 N.J. 53 (1969) is distinguishable from the case at bar. In Bigley, the Assignment Judge took testimony and ultimately ruled that additional funds were warranted to that Prosecutor's Office. Here, Atlantic County has merely inquired about expenditures and allocation of overtime and other resources as part of its oversight functions. There is no allegation of retaliation or restriction on funding because none has occurred. Accordingly, the ruling in Bigley has limited application to the facts of this case.

POINT X

THE PROSECUTOR'S ATTEMPT TO ELIMINATE ALL FINANCIAL INQUIRIES INTO THE OPERATION OF HIS OFFICE BY DEFENDANTS AMOUNT TO A TORTIOUS INTERFERENCE WITH MULTIPLE CONTRACTUAL RELATIONSHIPS INVOLVING THE COUNTY.

The County has multiple contracts with a Third-Party Administrator ("TPA"), the Atlantic County Insurance Commission ("ACIC"), the County Excess Liability Joint Insurance Fund ("CEL JIF"), and various excess insurance carriers. (See Certifications of Defendant Levinson and N. Lynne Hughes, Esquire).

The New Supreme Court has opined:

> An action for tortious interference with a prospective business relation protects the right 'to pursue one's business, calling, or occupation free from undue influence or molestation.' . . .
>
> The separate cause of action for the intentional interference with a prospective contractual or economic relationship has long been recognized as distinct from the tort of interference with the performance of a contract. Not only does New Jersey protect a party's interest in a contract already made, '[t]he law protects also a [person's] interest in reasonable expectation of economic advantage.' The reason for protecting prospective interests in

contractual or other economic interests was identified long ago as follows:

> In a civilized community which recognizes the right of private property among its institutions, the notion is intolerable that a man should be protected by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it. The cup of Tantalus would be a fitting symbol for such mockery.

Our courts continue to find actionable interference even when there is no enforceable contract. . . .

Printing Mart v. Sharp Electronics, 116 N.J. 739, 750 (1989). (Internal citations omitted).

As the Appellate Division has repeatedly stated:

> The elements of a cause of action for tortious interference with economic advantage are (1) a protected interest, which need not amount to an enforceable contract; (2) intentional interference with that protected interest without justification; (3) the reasonable likelihood that the anticipated benefit from the protected interest would have been realized but for the interference; and (4) economic damage as a result.

C & J Colonial Realty, Inc. v. Poughkeepsie Savings Bank, 355 N.J.Super. 444, 478 (App. Div.), cert. denied 176 N.J. 73 (2002).

The Appellate Division has further elaborated:

> Fundamental to this cause of action is the requirement that the claim be directed against defendants who are not parties to the contractual relationship.

Weil v. Express Container Corporation, 360 N.J.Super. 599, 614 (App. Div.), cert. denied, 177 N.J. 574 (2003).

Any refusal of the Prosecutor to answer financial questions of the County concerning the operation of his office that may impact anticipated litigation amounts to a

tortious interference and any Order entered by this Court allowing same would be aiding and abetting that interference. Defendants are confident the Court will not do so.

POINT XI

WITHOUT ACKNOWLEDGING ANY CONFLICT OF INTEREST, IF N. LYNNE HUGHES, ESQUIRE, AND ARTHUR J. MURRAY, ESQUIRE, RECUSE THEMSELVES FROM ANY COMMUNICATION WITH THE ACPO, THE PROSECUTOR CANNOT IDENTIFY A SCENARIO WHERE HE WOULD NEED AN INDEPENDENT OUTSIDE ATTORNEY THAT WOULD NOT BE COVERED BY THE ALTERNATIVE SUPPLIED BY THE COUNTY.

Without acknowledging the merits of any position of the Prosecutor, the County has offered him an alternative to hiring an outside attorney at unnecessary expense to the taxpayers of Atlantic County. Until the Prosecutor can itemize a scenario not covered by the Certifications of Defendant Levinson or Ms. Hughes as this alternative, there is no need for the Court to entertain the request for a purported independent outside attorney.

POINT XII

ASSUMING THE COURT FINDS THE ISSUE OF THE NEED FOR INDEPENDENT OUTSIDE COUNSEL RIPE AND REJECTS DEFENDANTS' ALTERNATIVE OPTION, A PREREQUISITE FOR THIS COURT'S DECISION IS A DETERMINATION WHY THE PROSECUTOR CANNOT FUND SAME WITHIN HIS OWN 2026 BUDGET.

N.J.S.A. 2A:158-7 provides:

> Except as provided in section 2 of P.L.2019, c.233 (C.2A:158-7.1), all necessary expenses incurred by the prosecutor for each county in the detection, arrest, indictment and conviction of offenders against the laws shall, upon being certified to by the prosecutor and approved, under his hand, by a judge of the Superior Court, be paid by the county treasurer whenever the same shall be approved by the board of chosen freeholders of such county. The amount or amounts to be expended shall not exceed the amount fixed by the board of chosen freeholders in its regular or emergency appropriation, **unless such expenditure is specifically authorized by order of the assignment judge of the Superior Court for such county;**

> **however, the assignment judge shall consider the financial impact of such an order on the governing body of the county, its residents, the limitations imposed upon the local unit's property tax levy pursuant to subsection b. of section 10 of P.L.2007, c.62 (C.40A:4-45.45), and county taxpayers.**

(Emphasis added).

As noted in the Certification of Tammi Robbins, if requested within an amended 2026 budget of his office, the Prosecutor would likely be allowed to hire an independent outside attorney. Thus, before the Court even reaches the threshold issue, the Prosecutor must first demonstrate to the Court why he could not fund such an attorney within his own 2026 budget before seeking the County to fund it over and above his yet to be determined budget.

POINT XIII

ASSUMING THE COURT FINDS THE ISSUE OF THE NEED FOR INDEPENDENT OUTSIDE COUNSEL RIPE AND REJECTS DEFENDANTS' ALTERNATIVE OPTION, ANY ORDER OF THE COURT SHOULD INCLUDE REQUIRED COMPLIANCE WITH COUNTY ORDINANCES AS TO THE RETENTION OF OUTSIDE COUNSEL.

If the Court ultimately concludes that an outside independent attorney is warranted, the selection and retention of that attorney should be ordered to be consistent with County ordinances. (See Certification of Palma Conover). There is no risk to the Prosecutor because up to $17,499.00 can be spent without the need for approval by the Commissioners.

POINT XIV

GIVEN THE ATTENDANT CIRCUMSTANCES, WERE THE COURT INCLINED TO ENTER AN ORDER AS TO THE COUNTY EXECUTIVE'S ABILITY TO COMMENT OR SPEAK, SAID ORDER WOULD BE DEEMED A LEGAL NULLITY.

Paragraph (f) of the Prosecutor's proposed Order seeks to restrain Defendants from speaking on "any open pending cases and/or investigations."

This request presumes the ACPO supplies the County with a running list of its "open investigations." No County Prosecutor, and certainly not the current Prosecutor, has ever supplied the County or the County Executive with a list of "open investigations." (See Certification of Defendant Levinson).

It is unknown how the Prosecutor would have this Court enforce the impossible where it comes to "open investigations."

This request also presumes the ACPO supplies the County with a running list of its "pending cases." No County Prosecutors and certainly not the current Prosecutor has ever supplied the County or the County Executive with a list of "pending cases." (See Certification of Defendant Levinson).

It is unknown how the Prosecutor would have this Court enforce the impossible when it comes to "pending cases."

Given the above, any all-encompassing Order entered by the Court would be deemed a legal nullity. The Order would be based on non-existent lists that change daily that are not circulated between the ACPO and the County and are not thereafter distributed within the County.

POINT XV

IN THE ABSENCE OF A REAL AND IDENTIFIABLE IMPACT UPON THE PROSECUTOR OR HIS OFFICE, THIS COURT CANNOT SEEK TO STIFLE THE SPEECH OF THE COUNTY EXECUTIVE.

No judge has ever ruled that he or she was dismissing a case based on anything the County Executive has ever said. No judge has ever ruled that he or she was limiting evidence in a case based on anything the County Executive has ever said. No judge has ever ruled that he or she could not sit an impartial jury for a trial in the County in criminal court because of anything the County Executive has ever said.

The Prosecutor in this case has dismissed the cases against LaQuetta Small and Constance Days-Chapman. In no public statement and nowhere in his Moving Papers has the Prosecutor indicated that his decision was in any way impacted by anything the County Executive has ever said or done or based on anything the County Executive has ever instructed Ms. Hughes or Mr. Murray to ever say.

The Supreme Court has recognized that one of the critical purposes of the first amendment is to provide society with a basis to make informed decisions about the government. Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). Specifically:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes.

Mills v. Alabama, 384 U.S. 214, 218-219 (1966). Indeed, the first amendment guarantees that debate on public issues is "'uninhibited, robust, and wide open'" Bond

v. Floyd, 385 U.S. 116, 136 (1966) (quoting New York Times Company v. Sullivan, 376 U.S. 254, 270 (1964)).

In short, the Prosecutor cannot point out any real or identifiable impact on him or his office given any comments made by the County Executive. Any limitation sought against the County Executive is based on hyperbole and hysterics.

POINT XVI

THE PROSECUTOR SEEKS UNCONSITUTIONAL PRIOR RESTRAINTS ON THE COUNTY EXCEUTIVE'S FIRST AMENDMENT RIGHT OF FREE SPEECH.

In Paragraphs 44 through 58 of the Verified Complaint, the Prosecutor seeks this Court to restrain the County Executive from commenting on any open investigations or pending cases. (See also paragraph (f) of the Prosecutor's proposed form of Order).

This argument and proposed relief are imposing a prior restraint on the County Executive's right of political free speech. The United States Supreme Court has established a heavy presumption against the constitutional validity of any system of prior restraints on expression. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963). This presumption applies with full force when applied to the public statements of an elected official. Wood v. Georgia, 370 U.S. 375, 393-94 (1962).

In Wood at 393, the Supreme Court held that a Sheriff could not be held in contempt for publicly criticizing a Judge's decision to convene a grand jury. The Supreme Court ruled that the First Amendment protects an elected official's right to speak on public matters, even if the speech is critical of the Judiciary or Prosecutions. In the present case, the County Executive represents the citizens and taxpayers of Atlantic County. As the CEO of the County, he is charged with the duty to oversee and safeguard the public funds expended by the County. His criticism and questions about

the cost of the Marty Small trial is protected political speech. The Prosecutor cannot limit or worse, silence a critic who has First Amendment Protections.

Indeed, prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights. Nebraska Press Association v. Stuart, 427 U.S. 539, 559 (1976). While acknowledging the 6th Amendment right to a fair trial, the Supreme Court held that it does not automatically take precedence over First Amendment freedoms. See id. at 561; see also, New Jersey Constitution Article 1, Paragraph 6, "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

POINT XVII

WITHOUT CONCEDING ANY MERIT TO THE PROSPECUTOR'S MOTION TO DISQUALIFY, SAME WOULD ONLY APPLY TO TRIAL OR A PLENARY HEARING.

The Court need not reach the merits of the Prosecutor's Motion Seeking to Disqualify Arthur J. Murray, Esquire.

The following is black letter law in New Jersey:

> We agree that **RPC 3.7 is a rule addressed only to a lawyer acting as an advocate at trial**. Accordingly, the trial court judge erred in relying on it to bar all Mazie Slater lawyers from representing defendants at depositions or in any other pre-trial matters. The judge overread Main Events to hold "that other proceedings in the case," such as depositions, "might so closely resemble the trial as to also implicate the rule." The holding in Main Events is exactly to the opposite. Id. at 356-57.

Escobar v. Mazie, 460 N.J.Super. 520, 527 (App. Div. 2019). (Emphasis added).

This Court can take judicial notice of the following:

a. Entering a Notice of Appearance is not advocating at trial;

b. Preparing a Legal Brief is not advocating at trial;

c. Helping to prepare Certifications is not advocating at trial; and

d. Arguing an Order to Show Cause (in the absence of the Court asking for testimony) is not advocating at trial.

In short, as with most of his application, the Prosecutor's Motion Seeking to Disqualify Arthur J. Murray, Esquire, is premature.

POINT XVIII

THE PROSECUTOR HAS NOT MET THE STANDARD REQUIRED UNDER CROWE TO TRIGGER THE ISSUANCE OF AN INJUNCTION.

In Crowe v. DeGioia, 90 N.J. 126, 132-135 (1982), the New Jersey Supreme Court discussed the factors that must be present to permit the imposition of a preliminary injunction. There, the Court noted that "New Jersey has long recognized, in a wide variety of contexts, the power of the judiciary to prevent some threatening, irreparable mischief, which should be averted until opportunity is afforded for a full and deliberate investigation of the case." Crowe, 90 N.J. at 132. (Internal citations omitted).

The Crowe Court noted that the following factors must be shown in order for a Court to issue a preliminary injunction: (1) it is necessary to prevent irreparable harm; (2) the legal right underlying the [Plaintiff]'s claim is settled; (3) all material facts are undisputed; (4) there is a reasonable probability that the [Plaintiff] will ultimately succeed on the merits of her claim; and (5) the Court should consider the relative hardship to the parties in granting or denying the relief. Crowe, 90 N.J. at 132-134.

Here:

a. No irreparable harm has been identified by the Prosecutor;

b. All material facts are not undisputed; and

c. It is highly unlikely that the Prosecutor will succeed on the merits.

CONCLUSION

The Order to Show Cause aspect of this Complaint should be dismissed.

ATLANTIC COUNTY DEPARTMENT OF LAW
Attorneys for Defendants County of Atlantic and Dennis Levinson, in his official capacity as Atlantic County Executive

By:/s/Arthur J. Murray
Arthur J. Murray, Esquire
Assistant County Counsel

Dated: January 21, 2026