

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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|--------------------------|---|--------------------------------------|
| IVY HILL CONGREGATION OF | : | |
| JEHOVAH'S WITNESSES, | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 316 MD 2020 |
| | : | |
| DEP'T OF HUMAN SERVS., | : | |
| Respondent | : | <i>Electronically Filed Document</i> |

APPLICATION TO STRIKE PETITIONER'S REPLY

AND NOW, comes Respondent, Department of Human Services, by and through counsel, and for the following reasons respectfully requests that the Reply in Further Support of an Application for a Case Management Order filed by Petitioner be stricken from the record.

1. On June 25, 2021, Petitioner filed an Application for a Case Management Order seeking an expedited discovery schedule.
2. Rule of Appellate Procedure 123 requires that all requests for relief from the Court shall be made by application and a response, if any, shall be filed within fourteen days. Pa.R.A.P. 123.
3. As permitted by Appellate Rule 123(b), Respondent filed an answer to the Application on July 9, 2021.
4. On July 13, 2021, the Court scheduled the parties for argument on Petitioner's Application and Respondent's Answer thereto.

5. Without leave of Court, on July 26, 2021, Petitioner filed a Reply to Further Support their Application for a Case Management Order.

6. Nothing within Appellate Rule 123 permits an additional filing after a response and on this basis alone the pleading should be stricken from the record.

7. In addition to the fact that this additional pleading is not permitted by the rules, the filing should also be stricken as Petitioner attempts to rely on an unofficial transcription of the March 2021 *en banc* proceeding to claim that undersigned counsel for Respondent has already conceded one of the two legal issues presented by this litigation. *See* Pet. Reply ¶ 2 and Pet. Ex. A.

8. The Commonwealth Court's Internal Operating Procedures and the Pennsylvania Rules of Judicial Administration prohibit the recording of oral arguments conducted and livestreamed unless done by the Pennsylvania Cable Network. *See* Pa. Cmwlth. Ct. IOP § 502; *see also* 210 Pa. Code § 69.502.

9. These same rules also expressly state that any reproduction developed by virtue of coverage of an *en banc* proceeding shall not be admissible as evidence. *See* Pa. Cmwlth. Ct. IOP § 502(d); *see also* 210 Pa. Code § 69.502(d).

10. Respondent respectfully requests that this Court strike Petitioner's Reply in Further Support of their Application for a Case Management Order as this additional filing was not permitted by the rules and Petitioner did not seek leave of Court to submit this additional filing.

11. Additionally Respondent respectfully requests that this Court prohibit any future use of Petitioner’s Exhibit A – the unofficial transcription of the March 2021 *en banc* proceeding – as any reproduction of an *en banc* proceeding shall not be admissible as evidence.

12. A brief in support of this application shall only be filed if requested by the Court as all applicable details have been included within this Application and, as stated above, the parties are currently scheduled for argument on the pending Application for August 5, 2021 at 1:00p.m.

WHEREFORE, Respondent respectfully requests that this Honorable Court strike Petitioner’s Reply as the pleading is not permitted by Appellate Rule 123 and prohibit all future use of Petitioner’s Exhibit A as the Court’s internal procedures expressly prohibit its use as admissible evidence.

Respectfully submitted,

JOSH SHAPIRO
Attorney General

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Date: August 2, 2021

Counsel for Respondent

CONFIDENTIAL INFORMATION CERTIFICATION

I certify that this filing complies with applicable state and local rules and the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*, which require filing confidential information and documents differently than non-confidential information and documents.

s/ Nicole R. DiTomo
NICOLE R. DITOMO
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I, Nicole R. DiTomo, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on August 2, 2021, I caused to be served a true and correct copy of the Respondent's Application to Strike Petitioner's Reply to the following:

VIA ELECTRONIC FILING

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ADDITIONAL COPIES SENT VIA REGULAR MAIL TO:

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s/ Nicole R. DiTomo

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