



Prosecutor's Office has been adversarial and antagonistic towards Judge Hunter ultimately producing a vindictive, selective prosecution tainted with an un-remediable conflict of interest.

### **PROSECUTORIAL VINDICTIVENESS**

The United States Supreme Court has repeatedly held that an indictment resulting from prosecutorial vindictiveness violates due process. *Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974). "Actual vindictiveness must play no part in a prosecutorial or sentencing decision and, since the fear of such vindictiveness may unconstitutionally deter a defendant's exercise of his rights, the appearance of vindictiveness must also be avoided." *United States v. King*, 126 F. 3d 394, 397 (2<sup>nd</sup> Cir. 1997). To establish prosecutorial vindictiveness, a defendant must show, through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus. *United States v. Wilson*, 262 F.3d 305, 314 (4<sup>th</sup> Cir. 2001). In other words, a defendant must only demonstrate that the decision to pursue criminal charges could not be justified as a proper exercise of prosecutorial discretion. *Wilson*, 262 F.3d at 316. To satisfy this burden, a defendant must present "some evidence" tending to show that the prosecution resulted from actual vindictive motives. *United States v. Adams*, 870 F.2d 1140, 1145-46 (6<sup>th</sup> Cir. 1989). The Hamilton County Prosecutor's decision to pursue criminal charges against Judge Hunter by appointing special prosecutors in this case was vindictive. The following chronological sequence of events clearly demonstrate same.

1. On October 11, 2012 Judge Hunter sent a letter to Hamilton County Prosecutor Joseph Deters requesting that Mr. Deters refrain from intervening in Hamilton County Juvenile Court employment matters regarding the hiring of a Court Administrator. The letter expressed that Mr. Deters exercised abnormal influence over Juvenile Court illegally overstepping his statutory authority to maintain control over Juvenile Court and deprived Juvenile Court judges of the autonomy dictated

by law. When Judge Hunter refused to allow the Hamilton County Prosecutor's Office to control her courtroom or influence her actions, Mr. Deters retaliated. See Ex. A attached hereto.

2. On October 17, 2012 Hamilton County Prosecutor, Joseph T. Deters said it was a conflict of interest for him to represent Judge Hunter because his prosecutors regularly appeared before Judge Hunter. However, in subsequent lawsuits filed within months against Judge Hunter by the Cincinnati Enquirer and WCPO, Mr. Deters insisted on handling those cases claiming there was no conflict of interest.
3. In November 2012 Hamilton County Prosecutor Joseph Deters filed a lawsuit against Judge Hunter in a case decided by a Hamilton County Juvenile Court Magistrate. The case was voluntarily dismissed by the Hamilton County Prosecutor's Office. However, the published misinformation was never retracted or corrected.
4. On December 5, 2012 the Hamilton County Board of Commissioners approved a resolution authorizing the employment of independent counsel to represent Judge Hunter in the lawsuit filed against her, citing a conflict of interest. However, in subsequent lawsuits filed against Judge Hunter, Hamilton County Prosecutor Joseph Deters refused to appoint independent counsel for Judge Hunter alleging there was no conflict of interest. See Ex. B attached hereto.
5. On February 8, 2013 Hamilton County Prosecutor Joseph Deters released a memorandum declaring Hamilton County Juvenile Court Judge John Williams the Administrative Judge of the Hamilton County Juvenile Court despite Judge Hunter's seniority. The Hamilton County Prosecutor's Office did not have the authority to determine judicial roles, particularly as the prosecutors have a direct interest in all cases that appear before the Judges. Pursuant to the Ohio Rules of Superintendence, this was an internal matter between the two Hamilton County Juvenile Court Judges. Neither the Court Rules, the Ohio Statute or Ohio Constitution gives the Hamilton County Prosecutor's Office such authority. However, Mr. Deters inappropriately inserted his influence over the Hamilton County Juvenile Court to maintain his office's control and interest.
6. On March 25, 2013, the Cincinnati Enquirer sued Judge Hunter for her judicial decision to protect children in her courtroom from harmful exposure in the media. Judge Hunter immediately

requested Mr. Deters to obtain her independent counsel because his office had just sued her multiple times and the rules of professionalism dictated that his office not handle her defense. However, despite his admitted conflicts of interest, Mr. Deters refused to appoint Judge Hunter independent counsel. The Hamilton County Prosecutor's office then proceeded to provide a mediocre and compromised defense on Judge Hunter's behalf by, among other things, filing pleadings that were inaccurate and contrary to Judge Hunter's instructions and legal position. Numerous writs were subsequently granted against Judge Hunter when the Hamilton County Prosecutor's Office failed to defend the writs.

7. On April 24, 2013 Judge Hunter sent a letter to Hamilton County Commissioner Todd Portune seeking independent legal representation citing a conflict of interest with the Hamilton County Prosecutor's Office.
  
8. May 6, 2013 Judge Hunter filed an ethics complaint against Assistant Hamilton County Prosecutor, Charles Lippert. More specifically, Judge Hunter sent a grievance to the Ohio Supreme Court in the case of In Re: DM on the grounds that Mr. Lippert refused a direct court order to surrender a police report that he planned to introduce as evidence against a child in a probable cause hearing to Judge Hunter for an in-camera review. When Mr. Lippert refused to comply, Judge Hunter threatened to hold him in contempt. The prosecutors were up in arms that Judge Hunter dared to hold a Prosecutor in contempt. In fact, Assistant Hamilton County Prosecutor James Harper and a host of other Assistant Hamilton County Prosecutors immediately showed up in Judge Hunter's courtroom in an effort to intimidate Judge Hunter. Subsequently, the Prosecutor stated in pleadings filed with the First District Court of Appeals that Judge Hunter ordered Mr. Lippert to turn over the 527B to the defense counsel when in fact Judge Hunter ordered that an in-camera inspection of the 527B be conducted. Courtroom video and documents filed by the Hamilton County Public Defender's Office accurately report Judge Hunter's ruling. See Ex. C attached hereto.
  
9. On May 6, 2013 Judge Hunter sent an email to Hamilton County Public Defender Ray Fowler reporting what appeared to be unethical conduct against Attorney Jay Clark regarding

his representation of children in her courtroom. The mother of the juvenile defendant overheard Attorney Clark telling the Assistant Hamilton County Prosecutor that he (Attorney Clark) tried to help him (the Prosecutor).

10. Between June 5 and July 1, 2013 Judge Hunter filed a supplemental complaint against Assistant Hamilton County Prosecutor Charles Lippert. Judge Hunter filed a supplemental grievance regarding Mr. Lippert after it was brought to Judge Hunter's attention that the Prosecutor's Office engaged in Judge shopping after receiving a Magistrate's ruling that was contrary to the State of Ohio's interest. The case should have appeared before Judge Hunter on objection, but Mr. Lippert requested that it be removed from Judge Hunter's docket and transferred to Judge John Williams' docket. The Prosecutor's Office, with the assistance of Magistrate Constance Murdock, transferred other cases in similar manner, potentially violating rules of ethics and compromising the constitutional rights of children and parents whose cases were transferred to a different judge. See Ex. D attached hereto..
11. On June 25, 2013 Judge Hunter renewed her request in writing to Hamilton County Prosecutor Joseph Deters for independent legal counsel. See Ex. E attached hereto.
12. On June 26, 2013 Judge Hunter wrote the Ohio Attorney General requesting an investigation into the Hamilton County Prosecutor's Office for unethical misconduct in the handling of Judge Hunter's cases and requesting independent counsel.
13. On July 10, 2013 Judge Hunter filed a second request with the Ohio Attorney General for an investigation into the Hamilton County Prosecutor's Office.
14. On July 12, 2013 Judge Hunter filed a grievance against Hamilton County Prosecutor Joseph Deters, and Assistant Hamilton County Prosecutors Chris Schaefer and James Harper. See Ex. F attached hereto.
15. Between July 12, 2013 and August 27, 2013 Hamilton County Prosecutor Joseph Deters ended his representation of Judge Hunter citing a conflict of interest. Mr. Deters notified the media but never notified his "client", Judge Hunter in violation of ethics rules.
16. On August 27, 2013 Mr. Deters went on WLW complaining about Judge Hunter's grievance against him. Importantly, in addition to making extremely disparaging remarks about Judge Hunter, Mr. Deters specifically detailed what was

required to have Judge Hunter removed from the bench and suggested that she be removed. Mr. Deters made the statements despite admitting that he had never personally met Judge Hunter.

17. On September 13, 2013 the Cincinnati Enquirer published an article alleging Judge Hunter may have committed a crime. On the same day Assistant Hamilton County Prosecutor William Breyer released a memorandum stating that Judge Hunter back-dated documents. The memorandum was released directly to the media in violation of Rules of Ethics.
18. On September 30, 2013 a Subpoena Duces Tecum was issued for Judge Hunter's staff and Judge Hunter's emails that the Hamilton County Juvenile Court Administrator granted without consulting Judge Hunter, in violation of her constitutional rights to due process, and without Judge Hunter being provided an opportunity to put legal counsel in place to get a protective order protecting Judge Hunter's work product. Many emails involved cases that the Prosecutor's Office had a direct interest in.

The vindictiveness of the Hamilton County Prosecutor's office and the special prosecutors is also demonstrated by the meritless unlawful interference with a public contract charges in the indictment. The special prosecutors in this case know that there is no evidence whatsoever that Judge Hunter at any time interfered with her brother's employment with the Hamilton County Juvenile Court. The special prosecutors are aware that as a Hamilton County Juvenile Court Judge, Judge Hunter is a statutory employer of juvenile court and liable for the conduct of all juvenile court employees. As such, Judge Hunter is aware and sometimes becomes involved in employment related issues. However, as the special prosecutors know, Judge Hunter did nothing to interfere with her brother's employment. The unlawful interference with a public contract charges are simply retaliation for Judge Hunter questioning James Harper, Hamilton County Prosecutor Joseph Deters' Chief Assistant Prosecuting Attorney regarding his entanglement with juvenile court's employment matters while simultaneously representing Judge

Hunter and for Judge Hunter repeatedly raising serious concerns regarding Hamilton County Juvenile Court's selective hiring.

In summary, Judge Hunter was systematically sued by the Hamilton County Prosecutor's Office and the Hamilton County Public Defender's Office in an effort to malign Judge Hunter and prevent her from protecting the constitutional rights of children and families. It was only after Judge Hunter accused the Hamilton County Prosecutor's Office of misconduct and unethical practices and filed a grievance with the Ohio Disciplinary Counsel against Hamilton County Prosecutor Joseph Deters and Assistant Hamilton County Prosecutors Charles Lippert, James Harper and Christian Schaeffer in the handling of cases against her and in her courtroom that Judge Hunter was suddenly accused of crimes by the Hamilton County Prosecutor's Office. The timing of the criminal accusations by the Hamilton County Prosecutor's Office against Judge Hunter occurred only after and in close proximity of Judge Hunter filing ethics violations against the Hamilton County Prosecutor's Office. In fact, the criminal charges against Judge Hunter arise out of the very case Judge Hunter reported the violations on. In light of the aforementioned undisputed abundant evidence as compared to "some evidence" it is crystal clear that the criminal investigation and prosecution of Judge Hunter resulted from a vindictive motive.

### **SELECTIVE PROSECUTION**

The Ohio Supreme Court has articulated the analytical framework regarding the issue of selective prosecution as follows:

The decision whether to prosecute a criminal offense is generally left to the discretion of the prosecutor. *United State v. Armstrong*, 517 U.S. at 464, 116 S. Ct. 1480, 134 L. Ed. 2d 687. That discretion is, however, subject to constitutional equal protection principles, which prohibit prosecutors from selectively prosecuting individuals

based on an unjustifiable standard such as race, religion, or other arbitrary classifications. *Id.*, quoting *Oyler v. Boles* (1962) 368 U.S. 448, 446, 82 S. Ct. 501, 7 L. Ed. 2d 446. Although a selective prosecution claim is not a defense on the merits to the criminal charge itself, a defendant may raise it as an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution. *State v. Getsy*, (1998), 84 Ohio St. 3d 180, 203, 702 N.E. 2d 866.

To support a claim of selective prosecution, a Defendant bears the burden of establishing, at least prima facie, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type, form and the basis of the charge against him, he has been singled out for prosecution and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e. based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights. *State v. Flynt* (1980), 63 Ohio St. 2d at 134.

In this case, the Hamilton County Prosecutor's decision to appoint special prosecutors to pursue criminal charges against Judge Hunter constitutes selective prosecution of the law.

Amazingly, Judge Hunter has been singled out by being indicted on four felonies, two counts each of tampering with evidence and forgery, for alleged conduct (back-dating judicial entries) that has been committed by many in the Hamilton County Juvenile Court pursuant to long-standing, well-known, prevalent, and accepted Hamilton County Juvenile Court practice and policy.

It is a commonly known fact that at the Hamilton County Juvenile Court Clerks and Case Managers routinely correct documents to reflect the actual date of hearings. Case Managers were trained in this practice by the Director of Case Management, Connie Murdock. This practice pre-dated judge Hunter's tenure at the Hamilton county juvenile Court. A review of hundreds of entries will show that court staff, under the supervision of Case Management, not

Judge Hunter, created the documents in the Juvenile Court's Case Management System, entered the documents in the Court's Case Management System and put the hearing dates on the filings. Judge Hunter signed the entries provided her by case managers after the documents were entered into the system by those case managers. Judge Hunter could not be expected to do the job of the Clerk's Office, Case Managers and Judge.

It is also known that Court personnel routinely removed entries and documents from the system and replaced them with other documents or entries, leaving no trace of the removed entries, a capability that Judge Hunter did not possess. It is suspicious, legally problematic and perhaps even criminal, that the Hamilton County Juvenile Court now claims that it cannot track entries changed or removed from the system prior to August 13, 2013. Of course, August 13, 2013 is the date immediately subsequent to the date the Hamilton County Prosecutor's Office accused Judge Hunter of committing the crime of back-dating judicial entries. The Prosecutor's Office was aware of these practices which pre-dated Judge Hunter yet chose to single her out for prosecution for invidious, bad-faith reasons. Moreover, the Special Prosecutors in this case, Attorney Scott Crosswell and Merlyn Shiverdecker, shared with Judge Hunter's former legal counsel that back-dating was a practice that pre-dated Judge Hunter and was well-known throughout the Court. However, the Hamilton County Prosecutor's Office and the Special Prosecutors still prosecuted Judge Hunter. In light of the foregoing, it is clear that Judge Hunter has been selectively prosecuted.

Furthermore, Judge Hunter was singled out for prosecution for uncovering and exposing pre-existing unethical practices in the Hamilton County Juvenile Court that she identified and began to clean up only after a few months on the bench. Singling Judge Hunter out for prosecution and removing her from the bench enabled the Hamilton County Juvenile Court to

divert the attention to Judge Hunter, thereby covering up the unethical practices of the Juvenile Court, misplacing the blame and enabling the Hamilton County Juvenile Court to purge, expunge and clean up case files to cover up the Court practices.

It is well known that Hamilton County Juvenile Court has a sloppy system of case management whereby court entries and case entries are routinely lost or missing from juvenile Court case files leaving court personnel to recreate court documents as though they were the original. The Ohio Supreme Court noted lots of missing documentation from case files in its case management review of Juvenile Court in 2012. Judge Hunter had just arrived to Juvenile Court and was not responsible for these pre-existing problems. It is also public record that Judge Hunter discovered, shortly after her arrival to Juvenile Court, that the Clerk's Office sent inaccurate reports to the Ohio Supreme Court each month misleading the Supreme Court regarding its case statistics. Judge Hunter discovered the unlawful and unethical practices by prior judges and court personnel and forced an overhaul of the case management system. The Hamilton County Juvenile Court Clerk's Office admitted that their data was errant. However, the former judges and current judges were not prosecuted for falsifying records and case data to the Ohio Supreme Court. Moreover, nobody from the Hamilton County Juvenile Court was prosecuted for authorizing practices of altering court documents which existed prior to Judge Hunter's tenure at the Hamilton County Juvenile Court.

Additionally Judge Hunter was falsely accused of using credit cards allegedly or personal court filings. The prosecutors knew when they filed these bogus charges that Judge Hunter had been sued in her official capacity as Judge and only used her court credit cards for judicially related court business. Judge Hunter was selectively prosecuted for appealing those cases to the

Ohio Supreme Court and for filing pleadings that demonstrated the Prosecutor's misconduct and negligence in the representation of her as Judge in those cases.

### **CONFLICT OF INTEREST**

The indictments against Judge Hunter should also be dismissed on the grounds that the indictments were obtained in violation of Judge Hunter's due process rights to an impartial prosecutor pursuant to the Fourteenth Amendment to the United States Constitution. The special prosecutors in this case who investigated, indicted, and are prosecuting Judge Hunter have had an un-remediable conflict of interest from the beginning of their involvement in this case. Their unethical, illegal involvement in this case has fatally tainted the grand jury probe that resulted in Judge Hunter's indictments. The only proper remedy is dismissal of the indictments.

The enormous discretion that a prosecuting attorney has carries with it the potential for individual and institutional abuse. *Brodenkircher v. Hayes*, 434 U.S. 357, 365 (1978). Therefore, American criminal law requires impartiality in the exercise of discretion on the part of the prosecutor. *Berger v. United States*, 295 U.S. 78, 88 (1935). It is a fundamental tenet of American criminal law that the accused has a constitutional right to the involvement of an impartial prosecutor who can make unbiased choices from all of the options available. *Young v. United States*, 481 U.S. 787 (1987). Prosecutors are public officials who must exclusively serve the public interest. *Berger v. United States*, 295 U.S. 78, 88 (1935). The injection of a personal interest or otherwise in the criminal enforcement process may introduce irrelevant and impermissible factors into prosecutorial decisions and violate constitutional provisions. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249 (1980). Where the prosecution has a personal interest such that his objectivity and impartiality are called into question the defendant's due process rights under the United States Constitution are violated.

In this case, the origin of the criminal investigation and subsequent indictments of Judge Hunter was the claim by Hamilton County Prosecutor Joseph Deter that his office was harmed by Judge Hunter's alleged improper back-dating of judicial entries. Accordingly, Mr. Deters, his office and agents/employees were alleged victims in this case. In fact, Mr. Deters and several Assistant Hamilton County Prosecuting Attorneys are listed as witnesses in this case and will be required to testify at trial in furtherance of the State's prosecution against Judge Hunter. It is axiomatic that it would be a clear conflict of interest for the Hamilton County Prosecutor, anyone in his office, or any agent/employee or person acting on his behalf to be involved in the investigation, charging or prosecution of Judge Hunter.

Mr. Deters recognized this undisputable fact and sought the appointment of a special prosecutor. It is believed that Mr. Deters requested Judge Ralph Winkler of Hamilton County Court of Common Pleas to appoint Scott Crosswell and Merlyn Shiverdecker as special prosecutors to investigate Judge Hunter. Although Judge Winkler was not the presiding Judge of the Commons Plea Court and it is unclear how he came to be involved in this case, Judge Winkler in fact appointed Scott Crosswell and Merlyn Shiverdecker as special prosecutors to investigate Judge Hunter. More importantly, it is well documented that Scott Crosswell and Merlyn Shiverdecker are closely aligned with Joe Deters as personal and private defense attorneys who represented Mr. Deters in multiple cases involving Joe Deters' alleged conduct in office. These cases include: a 2003 grand jury investigation when Mr. Deters was the State of Ohio Treasurer, and a different grand jury investigation involving a theft from the evidence room in the Hamilton County Sherriff's Department in 1996. It is also public record that Mr. Shiverdecker and Scott Crosswell financially contributed to Joe Deters' 2012 election campaign for Prosecutor. Accordingly, Scott Crosswell and Merlyn Shiverdecker cannot be considered

independent of the prosecutor's office, as required for the appointment of a special prosecutor.

The selection process of special prosecutors was clearly tainted, which means the resulting grand jury process, solely directed by those same prosecutors, was also tainted.

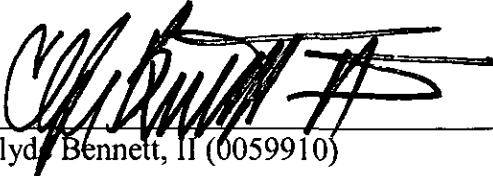
The conflict of interest the Special Prosecutors in this case have is made even more perverse by the fact that Attorney Gregory L. Adams, the law partner of Special Prosecutor Scott Croswell (Croswell & Adams Co., L.L.P.A.) currently represents Mr. Deters in Mr. Deters' pending divorce case. Attorney Adams was also representing Mr. Deters at the time of the conception and initiation of the criminal investigation and grand jury probe of Judge Hunter.

In summary, there was and still remains a glaring, un-remediable conflict of interest. The nub of the conflict of interest is the professionally and personally intertwined relationship between the Special Prosecutors and Mr. Deters. Both Special Prosecutors had a clear conflict of interest when they convened the grand jury and indicted Judge Hunter and both still have a conflict of interest to this day. Their initial and current involvement in this case is so prejudicial to Judge Hunter that the indictments against her must be dismissed.

### **CONCLUSION**

In light of the clear and convincing evidence demonstrating that the prosecution of Judge Hunter resulted from vindictive motives, that Judge Hunter was singled out for prosecution for conduct that many others routinely and occupationally commit without prosecution and that there was and remains an un-remediable conflict of interest with the Special Prosecutors, Judge Tracie M. Hunter respectfully requests this Court for an Order dismissing the indictments against her.

Respectfully Submitted,

  
Clyde Bennett, II (0059910)

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Attorney for Defendant  
Tracie Hunter

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been duly served upon the Special Hamilton County Prosecutor, R. Scott Crosswell, this 4<sup>th</sup> day of June, 2014.

  
Clyde Bennett, II



# Hamilton County Juvenile Court

800 BROADWAY  
CINCINNATI, OHIO 45202-1332  
(513) 946-9200

**JOHN M. WILLIAMS**  
Administrative and Presiding Judge  
(513) 946-9201  
(513) 946-9207 Fax

**TRACIE M. HUNTER**  
Judge  
(513) 946-9212  
(513) 946-9216 Fax

October 11, 2012

The Honorable Joseph T. Deters  
Hamilton County Prosecuting Attorney  
230 E. Ninth Street, Suite 4000  
Cincinnati, Ohio 45202

Re: Response to Judge John Williams's Request for a Legal Opinion Regarding a Second Court Administrator

Dear Mr. Deters:

I am in receipt of a letter that was hand delivered to me on October 9, by Judge John Williams, regarding a letter he sent to you, October 5, 2012, requesting an opinion regarding my decision to hire a second Court Administrator in Juvenile Court. For the record, Judge Williams neglected to discuss or attempt to resolve this issue with me before contacting your office. Judge Williams's office is two floors above mine. We owe a duty to the public to manage HR differences internally. Judge Williams should not continue using the Prosecutor's Office, his former employer and a public agency, to defy the law.

Therefore, I respectfully request that you recuse yourself and refrain from intervening in a matter involving Juvenile Court Judges that exceeds the scope of your jurisdiction. It is a conflict of interest and, therefore, unethical, for your office, which represented the Board of Elections and jointly filed briefs to the benefit of Judge Williams in *Hunter v. Board of Elections*, to take a political position on an internal HR issue. To do so, encroaches upon my judicial duties and obligation to the public.

Judge Williams asserts that, pursuant to R.C. 2151.13 and R.C. 2152.42, one Judge in a two Judge Court cannot unilaterally act to hire a second Court Administrator without the consent of the other Judge. If you would agree, it follows that the unilateral hiring of the first Court Administrator, 12-8-2011 by Judge Williams, without the consent or authorization of the second duly elected Judge, was illegal, violative of the statute and contrary to the argument he now proffers. In fact, between 11-3-2011 and 5-25-2012, Judge Williams unilaterally hired approximately 12 people. Judge Williams failed to follow the practices and procedures outlined in his memo. It is contrary to law, unethical and against the best interest of the public, who rely on our judicial integrity, to allow any Judge to apply statutes duplicitously when it inures to his benefit. For these reasons, it is prudent to hire a second Court Administrator to provide the balance and integrity dictated by a two Judge Court.

Judge Williams will argue that it was necessary for him to unilaterally hire a Court Administrator after the previous one retired. The departing Court Administrator was serving as an Acting Administrator for an unspecified interim timeframe. Judge Williams, knowing that the second Judge would inevitably arrive, could have appointed another Acting Administrator to help operate the Court until the duly elected Judge was seated. It was an abuse of power and against the best interest of the public and Juvenile Court for Judge Williams to unilaterally hire a permanent Court Administrator without the consent or participation of the second Judge. In the best interest of the Juvenile Court and the public, I recommended that both Judges hire one new Court Administrator that we mutually agreed upon; or alternatively, I would hire a second Court Administrator. Judge Williams refused to consider any compromise or pursue any common ground, which jeopardizes the Court.

While Judge Williams has hired over 12 people unilaterally, in addition to his direct staff, I have not, heretofore, unilaterally hired anyone. I met with the budgeting director upon my arrival to Juvenile Court, who informed me that the Court was over budget by over a half million dollars. Judge Williams and the current Court Administrator were leading the Court during that time. Despite the reported cost overruns, which preceded my arrival, Judge Williams unilaterally hired personnel, including non-funded, unnecessary personnel, before I, the duly elected Judge, was sworn into office. The Court Administrator I presented to HR has the legal expertise necessary to help balance the budget and restore integrity to Juvenile Court.

On 1-1-2012, Judge Williams hired a Director of Community Programs, a special position he created and unilaterally filled, that was unfunded, unnecessary and nonexistent in the Court's organizational chart. To date, I have not been able to ascertain what duties this Director fulfills. I recommended months ago that this non-essential position, created by Judge Williams, be eliminated to reallocate dollars for a critical position, such as a second Court Administrator, necessary and vital to the Court's overall function and stability.

On 3-9-2012, Judge Williams created another special position and unilaterally hired an evidence custodian, an unnecessary, unfunded position already staffed by an existing employee.

On 3-12-2012, Judge Williams created and unilaterally hired a Special Finance Coordinator, another unfunded position that previously did not exist in Juvenile Court's organizational structure.

Judge Williams misinterprets the law and errs when he asserts that I cannot hire a second Court Administrator that reports to me; as the current Court Administrator reports to him. R.C. 2151.13 clearly provides statutory authority for a Judge to hire personnel deemed necessary. R.C. 2151.13 provides that *the Juvenile Judge may appoint such bailiffs, probation officers, and other employees, as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. Such employees shall serve during the pleasure of the Judge.* Under the current antithetical conditions, this position is necessary. I contacted Judge Williams numerous times to meet regarding the business of operating the Court in a manner that ensures the economic and operational stability of the Juvenile Court. Regardless of our political differences and litigious past, we owe a duty to the public to provide superior quantitative and qualitative service to the families and children of Hamilton County we serve. When the current Court Administrator serves at the pleasure of only one Judge in a two Judge Court with equal powers, the entire Court and public suffers. By hiring a second administrator, I am protecting the public from harm.

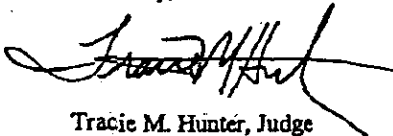
My hiring of a second Court Administrator is in legal accordance with both Ohio law and the practices and procedures of Juvenile Court, as promulgated by Judge Williams. The green sheet submitted by Judge Williams upon hiring the current Court Administrator was signed by Laura Maus, the HR Director, and Judge Williams. It only identifies one Judge, Judge Williams, as his immediate supervisor. It defies logic and legal prudence to now assert that a green sheet from the other Judge, hiring a second court administrator, signed by Laura Wickett (Maus) and me, as her immediate supervisor, divides the Court. Judge Williams cannot operate dictatorially. It is in the best interest of Juvenile Court and the public to hire a second Court Administrator, reporting to Judge Hunter, to ensure the integrity of operations and restore balance to Juvenile Court.

Hamilton County, authorized by your office, and Judge Williams spent nearly two million dollars over 19 months in Hunter v. Hamilton County Board of Elections in an effort to keep the duly elected Judge from office. Those two million dollars could have funded many positions and programs in Juvenile Court. In light of this history and the costly efforts to derail my Judgeship, Judge William's allegations of fiscal responsibility, when directed at me, are hypocritical and disingenuous.

Finally, my hiring a second Court Administrator is not unique to this Court. In the past, when similar circumstances dictated, Juvenile Court hired two Court Administrators when in the best interest of the children and families served by this Court.

R.C. 2151.42 is inapplicable; therefore, no further legal analysis is warranted. Thank you for your cooperation.

Sincerely,

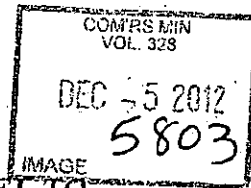


Tracie M. Hunter, Judge

Enclosure

Cc: Judge John M. Williams  
Laura Wickett

On motion of Mr. Hartmann, seconded by Mr. Monzel the resolution was adopted.



10-6  
J. Hunter

**RESOLUTION AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO REPRESENT THE HON. TRACIE M. HUNTER, JUDGE**

**BY THE BOARD:**

**WHEREAS**, the Prosecuting Attorney for Hamilton County, Ohio has filed an action in the Court of Appeals for Hamilton County, Ohio against Hon. Tracie M. Hunter seeking a writ of Prohibition against Hon. Tracie M. Hunter; and

**WHEREAS**, the Prosecuting Attorney cannot represent the Hon. Tracie M. Hunter in such litigation because of an apparent conflict of interest; and

**WHEREAS**, the Board of County Commissioners recognizes that the prosecuting attorney cannot represent Judge Hunter and therefore desires to retain the services of a special counsel to represent the Hon. Tracie M. Hunter, Judge to respond to litigation initiated by the Prosecuting Attorney against the Hon. Tracie M. Hunter.

**WHEREAS**, the Board believes that the costs of representation may exceed the annual compensation of the Prosecuting Attorney of Hamilton County, Ohio, which is the limit that can be paid to outside counsel pursuant to *R.C. 309.09(C)*; and

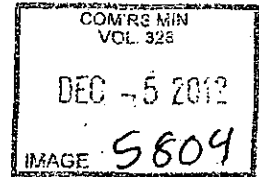
**WHEREAS**, the Board has requested, and the Prosecuting Attorney has agreed, to file an Application with the Court pursuant to the provisions of *R.C. 305.14(A)* to allow the appointment of Special Counsel for Judge Tracie Hunter in the above-referenced matter.

**THEREFORE, BE IT RESOLVED**, that the County Administrator is hereby authorized to sign an Application on behalf of the Board to be filed with the Court of Common Pleas of Hamilton County, Ohio seeking the retention of Special Counsel to represent the Hon. Tracie M. Hunter.

**BE IT FURTHER RESOLVED**, that the County Administrator is hereby authorized to enter into a retention agreement on behalf of the Hon. Tracie M. Hunter, Judge with the Special Counsel appointed by the Court of Common Pleas, General Division at an hourly rate set by the Court of Common Pleas and on other terms and conditions requested by the County Administrator on behalf of the Board.

**ADOPTED** at a regularly adjourned meeting of the Board of County Commissioners, Hamilton County, Ohio, this 5th day of December, 2012.

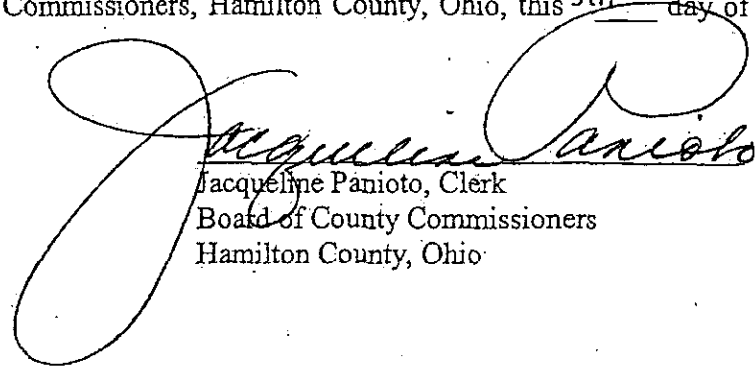
Mr. Monzel YES      Mr. Portune YES      Mr. Hartmann YES



CERTIFICATE OF THE CLERK

**IT IS HEREBY CERTIFIED** that the foregoing is a true and correct transcript of a Resolution adopted by the Board of County Commissioners, Hamilton County, Ohio, in session the 5th day of December, 2012.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the Official Seal of the Office of the Board of County Commissioners, Hamilton County, Ohio, this 5th day of December, 2012.

  
Jacqueline Panioto, Clerk  
Board of County Commissioners  
Hamilton County, Ohio

May 6, 2013

The Office of Disciplinary Counsel  
Supreme Court of Ohio  
Bicentennial Plaza One  
250 Civic Center Drive, Ste. 325  
Columbus, Ohio 43215-5454

RE: Charles Lippert: 1.1; 3.3; 3.4; 3.5; 3.6; 3.8; 8.2; and 8.4

To Whom It May Concern:

I am writing to report misconduct and to request an investigation of an attorney appearing before my Court, which has resulted in disruption in the courtroom, a pattern of disrespect toward the tribunal; and negative publicity, based on false representations to the media. This disruptive and non-compliant conduct has negatively impacted and compromised the due process rights of individuals appearing before this Tribunal in several proceedings, resulting in this grievance.

Prior to the commencement of a probable cause hearing involving a juvenile, the Attorney for the Defendant raised an outstanding discovery issue on a Motion to Compel, which this Court previously held in abeyance, to allow both Counsel for the State and Defendant to resolve their differences. The State, represented by Attorney Lippert, and the Defense Counsel could not resolve the differences, and upon Motion by Defense, this Court heard the Motion To Compel.

At issue, was a form 527b, prepared in the ordinary course of police work, subsequent to arrest. The Defense believed the Prosecutor was going to use information contained in the report during the pending probable cause proceeding. The Prosecutor repeatedly stated that he was not going to use the form and, therefore, was not required to provide it to the Defendant. Upon voir dire, by this Court, the Prosecutor admitted that he was going to use information contained in the report. Also, upon voir dire, the Prosecutor stated that this report had never been turned over in any other cases before the Juvenile Court. He stated before this Court several times that it had never been released to a Defendant. The Defense Counsel disagreed and stated that she was aware of instances where that exact report had been proffered, as this Court was also aware. Subsequently, the Prosecutor recanted his statement and said he was aware that it had been accidentally turned over in another instance, but that it was an accident. The Prosecutor stated that a recent First District Court of Appeals decision forbade the production of this report. Although such assertion was not the interpretation of this Court, this Court subsequently recessed to reread the decision, issued February 27, 2013, before proceeding, to ensure complete compliance with the decision.

In *In Re DM*, the Ohio First District Court of Appeals held that: "prior to a probable-cause bindover hearing, the state must provide to a juvenile upon request (1) any Brady materials in its possession; and (2) the evidence that the state intends to use at the probable cause hearing. They determined that their holding was applicable for both mandatory and discretionary bindover proceedings. The Prosecutor stated

multiple times to this Court that he planned to use the information contained in the report at the probable cause hearing. Such plan met the requirement.

However, despite his admission, the Court did not order the Prosecutor to turn over the report to the Defendant. The Court took another intermediary action and requested the Prosecutor, pursuant to *In Re DM*, to provide a copy of the report for review in camera by this Court. Mr. Lippert refused. In *D.M.*, the Court held that a trial court must conduct a hearing or in camera review before ruling, where production of a document is refused based on an asserted privilege.

The Court ordered Mr. Lippert, per the rules of practice, procedure and case law to allow the Court to review the document, a normal, customary pre-trial procedure designed to protect the due process rights of all those who appear before any tribunal. An in camera review of a report, which he admittedly was going to use at the probable cause hearing, did not jeopardize the state's position, but was in fact required by law for me in order to properly determine discovery issues and to facilitate a fair trial for a child, potentially facing adult charges. This Court had no recourse, based on Mr. Lippert's open defiance, but to consider contempt, which the law provides in matters, like this, where an attorney repeatedly refuses to obey a direct court order. The proper remedy, for an attorney that disagrees with a Judge's ruling, is appeal, not open Court defiance.

Mr. Lippert requested to consult his supervisor as to whether or not he should follow a direct court order. This court properly refused as the order was made, based on the law and routine trial practice, and any competent lawyer appearing before a tribunal knows to follow a Judge's order, especially an order that is normal, reasonable in nature and dictated by law. If all state lawyers interrupted pretrial proceedings to call their supervisors to question whether a routine court order should be followed, court proceedings would be delayed indefinitely and courtrooms chaotic. Mr. Lippert has been practicing before this Court for almost a year, presumably because he understands the trial process, including evidentiary and in camera proceedings held by the Court.

Rather than proceed on the appropriate contempt action, this Court employed a third measure, and afforded Mr. Lippert an opportunity to brief the issue, which time has not yet expired. In the interim, however, this Court learned that in violation of multiple rules, a newspaper reporter, called by the Prosecutors, during the recess, appeared and later reported false information regarding this Court's order, which could have only come from the Prosecutor. The reporter, called by the Prosecutors, failed to comply with the Ohio Rules of Superintendence and the Hamilton County Rules of Practice, required to gain access to the hearing. Therefore, no reporter was present during the hearing in question.

However, the next day, April 30, 2013, the reporter falsely, with intent to defame, reported that this Court ordered Mr. Lippert to turn the report over to defense lawyers, perpetrating an outright lie against this Court. The Enquirer then wrote an editorial, Sunday, May 5, 2013, repeating the same lie for public consumption, with the intent to defame this Court by asserting facts, known not to be true. As the Prosecutor involved, Mr. Lippert had an ethical duty to tell the truth, not assert such falsehood against a Judge, and to correct the false information distributed to over a million Enquirer subscribers in Hamilton County and an unlimited, innumerable amount of online subscribers. This was intent to harm.

In another matter before this Court, 5-6-2013, Mr. Lippert objected to this Court's placement of a child, held in detention over 90 days, pending a probable cause hearing, due to the delays of the State and defense that are harming the child. The Court determined that it was in the best interest of the child to be moved out of the county detention center and placed in a secure shelter facility that will guarantee both his safety and appearance as this matter proceeds. Mr. Lippert repeatedly challenged this Court's authority to make reasonable temporary placement orders for a child detained for an unreasonable period of time, due to no fault of the child's or this Court's. After being informed that the law allows interim placement

orders to protect the child, Mr. Lippert vehemently disagreed, despite the facility meeting the same secure condition as the detention center. Notwithstanding, Mr. Lippert had the right to object and he did multiple times, but it was unethical to intentionally engage the Court through badgering, disrespectful conduct, designed to disrupt the proceedings, especially when the only concern raised by Mr. Lippert was satisfied.

The juvenile was a ward of the state. At the prior hearing, this Court directed Hamilton County Jobs and Family Services to locate a secure facility to place the child, which would ensure his appearance; they did. Why would a juvenile court prosecutor argue against placing a juvenile in a safe, secure facility, when the juvenile has been abnormally detained, due to repeated delays, not the juvenile's fault, and all parties have a duty to do what is in the best interest of children?

This Court has the huge burden and responsibility of: balancing justice; protecting the public; guaranteeing the due process rights of juveniles, the most vulnerable of our society; implementing rehabilitative and treatment objectives; and ensuring courtroom decorum. This Court expects all attorneys to appear on time, ready for Court; and to conduct themselves with professional restraint and respectful decorum when appearing before this tribunal.

This Court has always treated Mr. Lippert with respect, despite his recent increasingly disrespectful demeanor before this Court: talking over me; arguing with me, after a ruling or determination has been made; and engaging in overall conduct, unbecoming a court officer, with behavior calculated to disrupt the Court. The Prosecutor is free to appeal any ruling of this Court. That is the remedy. However, the Judge has a judicial and ethical responsibility to maintain order and integrity of the trial process and to prohibit disrespectful, disruptive behavior in Court.

During my proceedings, Mr. Lippert's supervisor, Gwen Bender routinely observes my hearings and has been allowed to advise Mr. Lippert. At times, she has intervened in my hearings. Despite her constant walking, and entering and exiting my courtroom in the middle of court proceedings, which is extremely distracting from the bench, I have endured such disruption and never prevented Mr. Lippert from conferring with any supervisor, witness or counsel. I have provided great latitude, despite the constant distractions. Ms. Bender had been sitting in my courtroom that day. Perhaps the Juvenile Division of the Prosecutor's Office should be investigated to determine if they are instructing staff attorneys to openly disrespect a Judge and defy routine court orders and pretrial procedures employed by all courts.

This Court requests that an investigation be done into false statements repeatedly published, with intent to defame a sitting Judge; and disruptive patterns of conduct, designed to perpetuate chaos.

Thank you for your attention to this matter.

Sincerely,

Tracie M. Hunter, Judge



# Hamilton County Juvenile Court

800 BROADWAY  
CINCINNATI, OHIO 45202-1332  
(513) 946-9200

TRACIE M. HUNTER  
Judge  
(513) 946-9212  
(513) 946-9216 Fax

June 5, 2013

The Office of Disciplinary Counsel  
Supreme Court of Ohio  
Bicentennial Plaza One  
250 Civic Center Drive, Ste. 325  
Columbus, Ohio 43215-5454

RE: Charles Lippert: Case numbers 13-3739 and 13-3740 pending in Hamilton County Juvenile Court

To Whom It May Concern:

I am writing to supplement a complaint I recently filed against the above prosecutor and to request an investigation regarding a new matter involving this same attorney that has been brought to my attention by the Hamilton County Public Defender's Office. I report only out of an ethical obligation.

In a hearing before a Magistrate, in the above referenced cases, the prosecutor requested the Magistrate change an Order to a Decision to stay the legal proceedings while the State objected. She requested he put his request in writing. He did not put the request in writing, but later objected to her ruling. The Objection would appear before me, as I was the Judge presiding over the case. The prosecutor went to the clerk's office and set it for a hearing. The clerk, following the normal rules, set it on my docket. The prosecutor allegedly returned to the clerk's office and requested it be moved to Judge Williams's docket. The clerk, confused by the request, sent an email to her supervisor Connie Murdock, asking what to do, as she was confused by the request, having put the case before the Judge of record. Ms. Murdock moved the case, without notifying my Court, to Judge Williams' docket, at the alleged ex parte request of the prosecutor.

I was completely unaware that this transaction had occurred until I received a copy of a Motion filed by the Hamilton County Public Defender's Office, on May 30, 2013, requesting the case be transferred back to my docket. In the motion, they alleged: ex parte communications; lack of notice; and judge shopping, after an adverse ruling. When the Magistrate's supervisor inquired as to the circumstances by which the case was moved, Ms. Murdock replied it was a refiled case with a new charge. The case had been pending under the same case numbers for nearly a year, and was dismissed and refiled the morning of the scheduled hearing, April 24, 2013. The Public Defender's Office alleged in its Motion that the request to switch Judges occurred after several hearings and only after the Magistrate made a ruling adverse to the State's case. I contacted the Magistrate to inquire as to her knowledge of the transfer. She was not.

On Friday, May 31, 2013 at a luncheon, attended by myself and Judge John Williams, Judge Williams approached me about the case. He said it was transferred to him, but if I wanted it back, I could have it. He said that he believed the case was a refile and should be before him, as an additional charge had been added. I listened, but I did not respond as I had only recently become aware of the transfer by accident the day before and had no idea of all that had transpired. I was not notified of the transfer of the case by either Ms. Murdock, the docketing manager, or by Judge William's office, which is normally the practice.

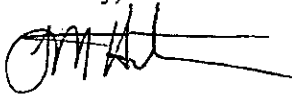
Procedurally, the Magistrate informed me that whenever the prosecutor's office files an objection or motion to set aside, they always provide a courtesy copy to the Magistrate. The Magistrate did not receive a courtesy copy in this instance, and only learned of the transfer to Judge Williams after I notified her.

On Tuesday, June 4, 2013, the Magistrate informed me that Judge Williams approached her after work about the case and informed her multiple times to tell Judge Hunter that I could have the case back. He was scheduled to hear the Objection on Wednesday, June 5, 2013. I did not believe it ethical to intervene and did not. A Magistrate does not have the authority to transfer a case to the docket of another Judge.

I have been on Hamilton County Juvenile Court for one year. The procedure followed in this instance was abnormal. While case assignment practices constantly change, which I have repeatedly questioned, if my office determines that a case should be before Judge Williams, my staff calls his office; and vice versa. If the docketing manager believes a case should be moved, she notifies the Judge presiding over the case for permission. The transfer of this case was only brought to my attention by the Public Defender's Motion.

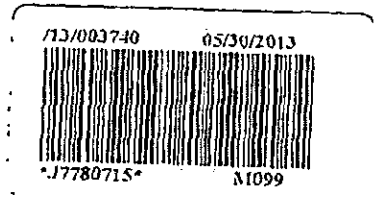
It is of concern that Mr. Lippert requested a Magistrate to change an Order to a Decision; and that this same case was transferred under allegations of questionable circumstances, based on the filed pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read 'TMH', with a horizontal line extending to the right.

Tracie M. Hunter, Judge

6-05-13 9:00 AM  
11:11:02



THE COURT OF COMMON PLEAS  
HAMILTON COUNTY, OHIO  
JUVENILE DIVISION

IN RE K█████ C█████,  
A Minor Child.

Case No. 13-3739X\* & 13-3740X\*

Magistrate Wende Cross

OBJECTION TO AND MOTION TO CORRECT ERRONEOUS TRANSFER OF JUDICIAL ASSIGNMENT

Now comes K█████ C█████, a juvenile, by and through counsel, and hereby objects to and moves to correct the erroneous transfer of judicial assignment from Judge Hunter to Judge Williams.

A. Facts and Procedure

K█████ is now 13 years old and was 12 at the time the state filed a complaint in Case No. 12-4895, alleging that she was delinquent of rape for engaging in sexual conduct with Y.W., another girl under 13 years old.

Case No. 12-4895, filed May 21, 2012, was pending for nearly a year when, on the eve of a suppression hearing, the state apparently realized that its case was constitutionally infirm under the Ohio Supreme Court's ruling in *In re D.B.*, 129 Ohio St.3d 104, 2011-Ohio-2671, 950 N.E.2d 528. In *D.B.*, the court found that R.C. 2907.02(A)(1)(b), stating that it is per se rape to engage in sexual conduct with a child under the age of 13, is unconstitutional in violation of the Equal Protection Clause of the U.S. Constitution when applied to one under 13 year old and not the other when the sexual conduct took place between two children under the age of 13.

\*These cases are currently designated as "X" (Judge Williams cases) in JCMS. The X designation has been used for ease of filing. However, K█████ takes the position that the transfer to Judge Williams from Judge Hunter was, in fact, erroneous and void.

FILED  
HAMILTON COUNTY  
OHIO  
2013 JUN 19 AM 9:30

On April 24, 2013, the magistrate dismissed Case No. 12-4895 without prejudice at the request of the prosecutor. (Magistrate's Decision, Case No. 12-4895, April 24, 2012).

On that same date, April 24, 2013, the state filed two new complaints against K[REDACTED]. The complaint in Case No. 13-3739Z (rape) alleged that K[REDACTED] engaged in sexual conduct with Y.W. when Y.W.'s "ability to resist or consent was substantially impaired because of a mental or physical condition and [K[REDACTED]] knew or had reasonable cause to believe that Y.W.'s ability to resist or consent was substantially impaired because of a mental or physical condition contrary to and in violation of Section 2907-02(A)(1)(c) of the Ohio Revised Code, a felony of the first degree."

The complaint in Case No. 13-3740Z (gross sexual imposition) alleged that K[REDACTED] had sexual contact with Y.W., another girl under 13, contrary to and in violation of R.C. 2907.05(A)(4), a felony of the third degree.

#### **B. Invalid Transfer of Judicial Assignment**

Sup.R. 36(B) requires that "a case immediately is assigned by lot to a judge of the division, who becomes primarily responsible for the determination of every issue and proceeding in the case until its termination."

This Court has adopted an assignment procedure in compliance with Sup.R. 36. The Court uses two letters, X and Z, to designate which judge each case is assigned to. Where a case number ends in X, the case is assigned to Judge Williams; where it ends in Z, the case is assigned to Judge Hunter.

Here, Case Nos. 13-3739Z and 13-3740Z were randomly assigned a "Z" designation at the time of filing by operation of the Court's normal procedure. The complaints themselves bear the designation "Z." (Ex. A and B).

After filing, three hearing were held before Magistrate Cross and more than a month elapsed after the complaints were filed. The state never moved to have the cases transferred from Judge Hunter to Judge Williams. Nor did the state even mention judicial assignment as being a potential issue.

The state received an adverse ruling on a suppression motion. (Magistrate's Order, May 15, 2013). On May 22, 2013, the state filed a motion to set aside the magistrate's order and a number of other motions.

K██████ counsel's knowledge of how the cases were transferred from Judge Hunter to Judge Williams is very limited. What is known is that the prosecution made an ex parte request to have the cases transferred and the state's motion to set aside set on Judge Williams' docket. The state did not file a motion to transfer the cases. K██████ counsel was not informed of the state's intent to transfer the cases nor was K██████ counsel aware of the decision to transfer the cases until after the transfer was complete.

JCMS does show a notation on May 22, 2013 stating "Judge Transferred ON CASE FROM TRACIE M. HUNTER TO JOHN WILLIAMS." However, this notation is not accompanied by any sort of entry and it is utterly unclear who authorized this transfer.

The complaints and numerous other documents and entries filed in Case Nos. 13-3739Z and 13-3740Z bear on their faces the judicial assignment "Z" designation. Three lengthy hearings and more than a month elapsed after Case Nos. 13-3739Z and 13-3740Z were filed. Yet, the state did not move for transfer to Judge Williams in that time. It was only after the state received an adverse suppression ruling that the state affected the ex parte transfer of the cases to Judge Williams. While K██████ counsel is loath to suggest any kind of misconduct, the timing and ex

parte nature of the prosecution's actions make it very difficult to conclude that the prosecution has engaged in anything besides forum shopping.

"[R]eassignment of any case must be accompanied by a journal entry executed by the administrative judge which states a justifiable reason for transferring responsibility for the case to another judge. Absent such an entry, the judge assuming to act has no authority and his rulings are voidable on timely objection by any party." *Mlinarcik v. E. E. Wehrung Parking, Inc.*, 86 Ohio App.3d 134, 142, 620 N.E.2d 181 (8th Dist. 1993), quoting *Berger v. Berger*, 3 Ohio App.3d 125, 443 N.E.2d 1375 (8th Dist. 1981); *In re Robbins*, 8th Dist. No. 49542, 1985 Ohio App. LEXIS 7285, \*6-7 (Oct. 3, 1985).

Here, there is no journal entry transferring the cases. And there certainly has not been articulation of a justifiable reason for the transfer.

Therefore, the transfer of Case Nos. 13-3739Z and 13-3740Z is invalid. Such transfer should be voided and the cases should be returned to Judge Hunter.

### C. No Valid Reason for Reassignment

While ~~K~~ counsel has been kept woefully "in the dark" about why and how the judicial reassignment was affected, the assistant prosecutor did articulate, after the transfer, that the transfer was done because Case Nos. 13-3739Z and 13-3740Z were "refiles."

While the transfer in this case is prima facie invalid and should immediately be reversed, ~~K~~ will also show that there is no valid reason for transfer.

The state may look to Sup.R. 36(D), which allows: "[i]n any instance where a previously filed and dismissed case is refiled, that case shall be reassigned to the judge originally assigned by lot to hear it unless, for good cause shown, that judge is precluded from hearing the case."

It is true that Case No. 12-4895 was given the "X" designation and assigned to Judge Williams. Case No. 12-4895 was only ever before the magistrate; Judge Williams never heard anything related to that case. Moreover, Case Nos. 13-3739Z and 13-3740Z are not refilings of Case No. 12-4895 within the meaning of Sup.R. 36(D).

An example of a refiled case would be a robbery that is dismissed because the victim did not appear in court. If the complaint were filed again, it would be a true "refiled" case – the same occurrence, the same elements, etc.

Here, the state has alleged rape under a different subsection of the statute containing different elements. Moreover, the state has added a gross sexual imposition charge, an entirely new and different offense.

These are different offenses with different operative facts. Presumably the state must recognize this as well. Otherwise, it would be difficult to see how the state could justify arguing that these are the same offenses or conduct as charged in Case No. 12-4895 when the state has recognized prosecution in Case No. 12-4895 to be constitutionally infirm under *D. B.*

Moreover, the state has a general practice of designating cases as "refiled" on the face of the complaint. The state did not designate Case Nos. 13-3739Z and 13-3740Z as "refiled," which would indicate that the state did not even believe them to be "refiled."

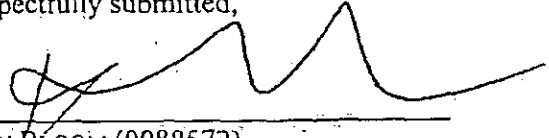
Case Nos. 13-3739Z and 13-3740Z are not "refiled" cases within the meaning of Sup.R. 36(D). There is no valid reason to transfer Case Nos. 13-3739Z and 13-3740Z.

#### **D. Conclusion**

The transfer of Case Nos. 13-3739Z and 13-3740Z from Judge Hunter to Judge Williams at the ex parte request of the prosecution without judicial entry and without valid reason is erroneous and should be vacated.

Therefore, ~~Karla~~ respectfully requests that this Court transfer Case Nos. 13-3739Z and 13-3740Z back to Judge Hunter.

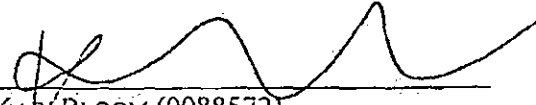
Respectfully submitted,



KARI BLOOM (0088572)  
GORDON C. MAGELLA (0083770)  
Attorneys for Kesha Chaney  
Hamilton County Public Defender's Office  
230 East Ninth Street, 3<sup>rd</sup> Floor  
Cincinnati, Ohio 45202  
Ms. Bloom: (513) 946-3834  
Mr. Magella: (513) 946-3846

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was personally served on the Hamilton County Prosecutor's Office on this 30th day of May 2013.



KARI BLOOM (0088572)  
GORDON C. MAGELLA (0083770)  
Attorneys for Kesha Chaney  
Hamilton County Public Defender's Office  
230 East Ninth Street, 3<sup>rd</sup> Floor  
Cincinnati, Ohio 45202  
Ms. Bloom: (513) 946-3834  
Mr. Magella: (513) 946-3846

June 25, 2013

HAND DELIVERED

Hon. Joseph T. Deters  
Hamilton County Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202-2151

Re: State ex rel. Cincinnati Enquirer and WCPO vs. Honorable Judge Tracie Hunter  
Case Nos. C-130183; C-1300241; C-130072

Dear Mr. Deters:

I am writing to renew my request for independent legal Counsel in the above-referenced cases.

Based on the breach of attorney client privilege by the assistant prosecutors assigned to my cases; pending ethical issues; and refusal to accept my assistance in my defense, which is the cornerstone of the legal system, it is imperative that I have independent, unbiased Counsel. Additionally, while litigation is pending, issues relative to litigation arise without intervention or advisement by my assigned Counsel.

Your office reported that I did not follow the protocol to obtain legal counsel, while aware that such assertion was untrue, based on my repeated requests and actions, per the statute.

ORC 309.09 and 305.14 detail the requisite steps. The Prosecutor or the Board of Commissioners must file application with the court of common pleas for the employment of outside legal counsel. 305.14 specifically states (A) The Court of Common Pleas, *upon the application of the prosecuting attorney and the board of county commissioners*, may authorize the board to employ legal counsel... That requires action by your office or the Commissioners. Once I made my request to both the Prosecutor's Office and the Board of Commissioners, I complied with the statute. (Emphasis added)

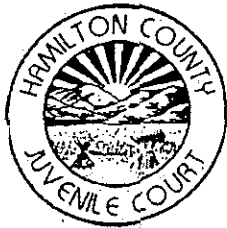
I requested Counsel through the Prosecutor's Office and the Board of Commissioners. The Board of Commissioners and/or Prosecutor's Office subsequently failed to make application on my behalf. The pleadings filed by your office suggesting I did not follow the steps are errant and evident of bias.

Please seek application with the Court of Common Pleas on my behalf immediately. Thank you.

Respectfully,

Tracie M. Hunter, Judge

Cc Todd Portune  
Greg Hartmann  
Chris Monzel



# Hamilton County Juvenile Court

TRACIE M. HUNTER  
Judge  
(513) 946-9212  
(513) 946-9216 Fax

800 BROADWAY  
CINCINNATI, OHIO 45202-1332  
(513) 946-9200

## PERSONAL AND CONFIDENTIAL

The Office of Disciplinary Counsel  
Supreme Court of Ohio  
Bicentennial Plaza One  
250 Civic Center Drive, Ste. 325  
Columbus, Ohio 43215-5454

July 12, 2013

Re: Ohio Rules Of Professional Conduct: 1.7; 1.6; 1.8; 1.11; 1.16; 3.6; 4.1; 8.2

To Whom It May Concern:

This letter is my official complaint against the Hamilton County Prosecutor's Office, specifically Joseph Deters, Christian Schaefer and James Harper, for failing to recuse themselves in four separate lawsuits filed against me. I requested independent representation of counsel, based on the ongoing actions of the Prosecutor's Office against me, and their inability and unwillingness to provide me with effective and zealous assistance of legal counsel. An inherent right of our justice system allows individuals to be provided or to retain impartial counsel who espouses the interest of those they represent. In several newspaper articles, Prosecutor Deters slandered my name and reputation without cause or justification.

I have never personally met Mr. Deters, except in passing, and we have never spoken, yet he made allegations as to my motivations as a Judge, that are not only prohibited by the code, but were false and inflammatory. In one instance, he accused me of intentionally picking a fight with a prosecutor in a case, suggesting it had something to do with separate media litigation. That was outrageous and completely unjustifiable. There was no nexus for him to make an allegation questioning my ethics as a Judge. This is just one example of slanderous statements made by his office, during this ongoing litigation. Additionally, they plead false and negative statements about me in responsive pleadings, which were subsequently cited by the Petitioners against me. In an unrelated matter, I was told that a prosecutor that I do not know, who has no litigation in my courtroom, alleged that the reason prosecutors failed to provide a document for in camera inspection, was that I would share it with defense counsel. It is unprofessional and unethical for any prosecutor to knowingly make such accusation when such action has never occurred.

There are ongoing issues, including ethical considerations currently at dispute, with prosecutors under Joseph Deters's control. It is impossible for his office to zealously defend me. For instance, in a hearing in my courtroom, Mr. Harper appeared in my courtroom with a team of prosecutors to support a prosecutor in an unrelated delinquency case. Subsequently, the prosecutors falsified information to the newspaper and in court records about the case regarding my orders as a Judge. The entire case was videotaped. Mr. Harper was previously the lead counsel in an election lawsuit against me that spanned from 2010 until 2012. However, there are residual issues that remain unresolved from that dispute or that have stemmed directly from that lawsuit and create ongoing dissension between the Prosecutor's Office and Juvenile

Court. Moreover, Mr. Harper has been sharing communications about me with employees or contractors of Juvenile Court while representing me. He also shared emails protected by attorney-client privilege with third parties, including Commissioners. I repeatedly expressed my disagreement over this flagrant disregard of the rules, but he dismissed my concerns regarding dual representation and conflict.

Mr. Schaefer has disseminated my emails, sent confidentially to him as counsel, with the media. The Petitioners subsequently used information that I shared with Mr. Schaefer, in confidence, against me in pleadings to bolster their case against me as a Judge. This has a chilling effect and has prevented me from being able to assist in my defense or share information with the prosecutor, because I cannot trust counsel, with good cause, based on their conduct, which has resulted in my defamation and malignment.

The First District Court of Appeals struck down pleadings by three competent lawyers who volunteered to represent me in my official capacity. Initially, the Prosecutor alleged that the only issue regarding securing independent counsel for me was county funding. After I alleviated that argument, they appealed to the First District Court of Appeals when I terminated their representation and entered new counsel. They alleged in pleadings that I did not follow the rules to acquire independent counsel, knowing such information was false. The statute directs either the Board of Commissioners or Prosecutors to contact the Court of Common Pleas, not the Elected Official seeking representation. I appealed to both the Board of Commissioners and the Prosecutors. Commissioner Todd Portune communicated to me that he requested the Prosecutor provide him the documentation necessary to follow the process, but they refused to assist.

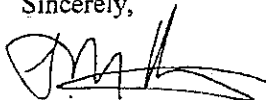
The First District Court of Appeals rejected my new counsel and struck down their pleadings, only after intervention by the Prosecutor's Office. Subsequently, I entered the litigation pro se and was again overruled. The cornerstone of our legal system allows individuals to represent themselves, but I have hostile representation. The Prosecutor argued that they were protecting the best interest of the Court. This is a misnomer at best as the Prosecutor's Office is at dispute with this same Court on many issues. Based on familial relationships that exist between the Prosecutor's Office and the First District Court of Appeals, I fear that my representation has been severely compromised, yet I have no equitable recourse short of recusal by the Prosecutor's Office or the First District Court of Appeals, to protect me as a Judge.

Regardless of the current rulings, but for the compromised position and clear conflicts of interest that I brought to the attention of the Prosecutor's Office at the onset of litigation, these rulings would have never occurred. The Prosecutor should have properly recused himself from the beginning and sought a special master or independent counsel to represent me as requested, based on its former and current actions.

The rulings by the First District Court of Appeals were made as a direct result of the conduct that gave rise to the ethical complaints I submit to the Office of Disciplinary Counsel for investigation.

For these reasons, I am requesting that appropriate action be taken for their violating my rights to have effective and zealous representation and for harming both my professional reputation as a Judge and personal reputation without cause or justification, in violation of the Ohio Rules of Professional Conduct.

Sincerely,



Tracie M. Hunter, Judge