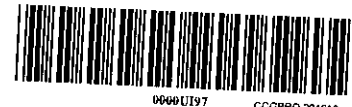


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IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

Michael J. McQueary,

Plaintiff,

vs.

The Pennsylvania State University,

Defendant.

) Docket No. 2012-1804

) Type of Case:
) Whistleblower

) Medical Professional Liability
) Action (check if applicable)

) Type of Pleading:
) Objection to the Court's *Sua Sponte*
) Granting to Plaintiff of Additional
) Time to Submit Contemporaneous
) Time Sheets

) Filed on Behalf of:
) Defendant, The Pennsylvania State
) University

) Counsel of Record for this Party:
) Nancy Conrad, Esquire
) White and Williams LLP
) 3701 Corporate Parkway, Suite 300
) Center Valley, PA 18034
) (610) 782-4909
) conradn@whiteandwilliams.com
) PA I.D. Number 56157

**DEFENDANT'S OBJECTION TO THE COURT'S *SUA SPONTE*
GRANTING TO PLAINTIFF OF ADDITIONAL TIME TO SUBMIT
CONTEMPORANEOUS TIME SHEETS**

AND NOW comes Defendant, The Pennsylvania State University, by and through its attorneys of record, White and Williams, LLP, and files the within Objection to the *sua sponte* decision of this Honorable Court to allow Plaintiff additional time to submit contemporaneous time sheets, alleging in support thereof as follows:

1. This filing is made in order to preserve on the record Defendant's Objection, as stated herein.
2. This Honorable Court ordered that, by December 14, 2016, Plaintiff was to file its Petition for Litigation Costs in connection with Plaintiff's claim under the Whistleblower Law.
3. Plaintiff did so on December 14, 2016.
4. In his Petition, Plaintiff chose not to produce the contemporaneous time sheets in support of his claim for the reimbursement of his attorney's fees.
5. Defendant timely responded to Plaintiff's Petition and, in part, raised the argument that: (a) under the lode star used to calculate attorney's fees in connection with a fee-shifting statute, a litigant must offer the contemporaneous time sheets that support his or her claim; (b) Plaintiff failed to do so in his Petition; (c) the time set by the Court for Plaintiff to file his Petition has passed and, as such,

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it is too late for Plaintiff to produce the evidence required under the lode star; and
(d) that failure is fatal to Plaintiff's Petition.

6. On January 18, 2017, the Court sent the following email to counsel:

From: Gavin, Thomas G. [mailto:tgavin@chesco.org]
Sent: Wednesday, January 18, 2017 5:08 PM
To: Elliott Strokoff; Conrad, Nancy; wtfleming@fleminglaw.info;
Centre County - Suzanne Hahn
Cc: Lloyd, Leisa M.; Bernardo-Rudy, Michelle Ann

Subject: Fees

Mr. Strokoff,

Given defendants response , I assume you will be submitting your contemporaneous time sheets. You may have until January 25 to do so. Defendant will have until February 8 to file it's response.

While Mr. Fleming may not have kept contemporaneous records, he can make use of the Strokoff records to the extent that he attended meetings, depositions etc.

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7. This decision was rendered by the Court *sua sponte*, in response to the Court's review of Defendant's response to Plaintiff's Petition. Plaintiff did not move to submit its contemporaneous time sheets *nunc pro tunc*.

8. Prior to the Court's decision, there was no communication between the Court and the parties, nor did Defendant have an opportunity to respond.

9. Defendant asserts that the Court's *sua sponte* decision to allow Plaintiff additional time to cure his failure to bring forth the evidence required to

meet the lode star constitutes additional evidence of this Court's bias in favor of Plaintiff, and against Defendant.

10. The Court's *sua sponte* decision to allow the Plaintiff to file the documentation required by the lode star, even though the time for the filing of same had already passed, constitutes an error of law and/or an abuse of discretion - and, as such, Defendant lodges its formal objection to that decision.

WHEREFORE, Defendant, The Pennsylvania State University, respectfully lodges its objection to this Honorable Court's *sua sponte* decision to allow Plaintiff to submit for the record documentation of his attorney's contemporaneous time sheets under circumstances where Plaintiff failed to do so in its Petition.

Respectfully submitted,

WHITE AND WILLIAMS LLP



By: _____

Nancy Conrad, Esq.
Attorney PA I.D. No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com
Attorneys for Defendant,
The Pennsylvania State University

Dated: January 25, 2017

WHITE AND WILLIAMS LLP
BY: Nancy Conrad, Esquire
Identification No(s). 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034-8233
610.782.4909/Fax 610.782.4932
conradn@whiteandwilliams.com

Attorneys for Defendant,
The Pennsylvania State
University

MICHAEL J. MCQUEARY, Plaintiff, v. THE PENNSYLVANIA STATE UNIVERSITY, Defendant.	: IN THE COURT OF COMMON : PLEAS OF CENTRE COUNTY : CIVIL ACTION NO. 2012-1804 : HON. THOMAS G. GAVIN
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CERTIFICATE OF SERVICE

I, Nancy Conrad, Esquire, hereby certify that on this 25th day of January, 2017, a true and correct copy of the foregoing Defendant's Objection to the Court's *Sua Sponte* Granting to Plaintiff of Additional Time to Submit Contemporaneous Time Sheets was served upon the following persons via First Class Mail, postage prepaid as follows:

Elliot A. Strokoff, Esquire
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
Counsel for Plaintiff

and

William T. Fleming, Esquire
Fleming Law Offices
111 Sowers Street, Suite 330
State College, PA 16801
Local Counsel for Plaintiff

Respectfully submitted,

WHITE AND WILLIAMS LLP



By: _____

Nancy Conrad, Esq.
Attorney PA I.D. No. 56157
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034
610.782.4909/ Fax 610.782.4935
conradn@whiteandwilliams.com
Attorneys for Defendant,
The Pennsylvania State University