



IN THE COURT OF COMMON PLEAS OF  
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,  
Plaintiff

v.

THE PENNSYLVANIA STATE  
UNIVERSITY,  
Defendant

Docket No. 2012-1804

(Judge Gavin)

FILED  
CLERK OF COURT  
CENTRE COUNTY, PA  
OCT 14 2012

**Petition for Costs of Litigation**

The Plaintiff, Michael McQueary, pursuant to Section 5 of the Pennsylvania Whistleblower Law, 43 P.S. §1425, hereby moves the Court for an award of the costs of litigation, including reasonable attorney fees and witness fees, averring in support thereof as follows:

1. This Petition is being filed pursuant to the Court Order and Award of November 30, 2016 in favor of the Plaintiff.
2. On May 8, 2012, the above captioned matter was initiated with the filing of a Praecipe for Writ of Summons.
3. On or about October 2, 2012, the Plaintiff filed a three count complaint against the Defendant, Pennsylvania State University (PSU). The first Count of said Complaint was filed under the Whistleblower Law.
4. 43 P.S. §1425, at the time this action was commenced provided in pertinent part as follows:  
  
“A court **may** also award the Complainant all or a portion of the costs of litigation, including reasonable attorneys fees on witness fees, if the court determines that the award is appropriate.” (emphasis added).
5. On or about October 22, 2012, the Defendant filed a Motion to Stay Proceedings.

6. A hearing and argument on Defendant's Motion was held before the Court on November 16, 2012, which Motion for Stay was denied by the Court by Order of December 19, 2012.

7. On or about January 15, 2013, Defendant filed Preliminary Objections to Plaintiff's Complaint.

8. Following briefing concerning the Preliminary Objections by the parties, oral argument was held before the Court on March 18, 2013, which Preliminary Objections were overruled by Opinion and Order dated April 16, 2013.

9. Defendant filed an Answer and New Matter on May 7, 2013, to which Plaintiff filed a Reply on May 24, 2013.

10. Plaintiff initiated discovery on May 23, 2013 with his Request for Production of Documents (First Set).

### **Costs**

11. The initial fee for filing the Writ of Summons was \$120.50 and the fee for the Sheriff's service of same was \$50.50.

12. During the discovery phase of this case, a total of 20 discovery depositions were taken by the parties - 13 depositions in State College, Pennsylvania, 4 depositions in Philadelphia, Pennsylvania or its immediate suburbs, 1 deposition in Pittsburgh, Pennsylvania and 2 depositions in Harrisburg, Pennsylvania, as are more particularly set forth in Exhibit A hereto. Also, the deposition of Rodney Erickson was taken in State College on July 16, 2015 for use in a discovery dispute hearing, and a trial deposition was

taken of Earnest Wilson on October 12, 2016. The total costs incurred by Plaintiff for those deposition transcripts is \$7,916.04, the individual amounts for which is set forth on Exhibit A hereto.

13. On September 21, 2016, Plaintiff paid \$84 to the Prothonotary of Centre County for trial subpoenas in this matter. Plaintiff also paid the sum of \$250 to effect service of the trial subpoena on witness David Joyner in Gulf Breeze, Florida.

14. Plaintiff also incurred necessary and reasonable witness fees of \$3,484 for expert witness John Parry and \$22,249.84 for expert witness James Stavros, including their time and expenses to testify at trial.

15. Also, in the case of this litigation, it became necessary to retrieve documents and or transcripts of testimony from legal proceedings relevant to this litigation in other jurisdictions, the cost of which totaled \$487.10, as is more specifically set forth in Exhibit B hereto.

16. Accordingly, Plaintiff seeks an award of costs, exclusive of attorneys fees, totaling \$34,641.14.

- a. \$171.00 (initial filing and service fees)
- b. \$7,916.04 (deposition fees)
- c. \$334.00 (subpoena fees)
- d. \$25,733.00 (expert witness fees)
- e. \$487.10 (costs advanced)

**Attorney Fees**

17. Paragraphs 1-16 above are incorporated by reference herein.

18. Attorney William T. Fleming was initially engaged, on a fee for services rendered basis, by the Plaintiff on or about November 10, 2010 to represent him in matters relating to the Sandusky investigation by the Pennsylvania Office of Attorney General. Attorney Fleming has represented the Plaintiff continuously since that date, including with respect to matters related to the instant litigation.

19. The firm of Strokoff & Cowden, P.C., was initially engaged to represent the Plaintiff on November 13, 2011, on a fee for service basis, and has represented the Plaintiff continuously since that date with respect to matters related to the instant litigation.

20. By the end of July, 2012, it became likely that the Plaintiff's dispute with the Defendant would be contested and lengthy, and that it would be impossible for the Plaintiff to pay for ongoing legal representation on a fee for services rendered basis.

21. On August 16, 2012, the Plaintiff and Strokoff & Cowden, P.C. and William T. Fleming, Esquire, entered into a Contingent Fee Agreement providing for payment of a fee for 25% of net recovery if achieved within 6 months of the date of the Agreement, and  $33\frac{1}{3}\%$  net recovery achieved more than 6 months after the date of the Agreement. Said Contingency Fee Agreement recognized that Attorney Fleming would be compensated for his services with one-third of the total contingency fee paid. Said Contingency Fee Agreement also provided that:

“If a court awards counsel fees to be paid by the Defendant, or if the Defendant agrees to pay counsel fees . . . the amount owed as a contingent fee under this Agreement shall be reduced by the amount awarded by the court or agreed to by the Defendant.”

22. Defendant PSU mounted a vigorous and time consuming defense to this litigation. For example:

a. Following Plaintiff’s Request for Production of Documents (First Set) served on May 23, 2013, Defendant initially responded thereto on July 15, 2013. Defendant served a First Supplemental Response to Plaintiff’s First Request for Production of Documents on or about August 27, 2013, and additional Supplemental Responses thereafter, culminating with Defendant’s Seventh Supplemental Response to Plaintiff’s First Request for Production of Documents on December 14, 2015.

b. Plaintiff served a Second Request for Production of Documents on or about March 17, 2014. Defendant initially responded to the Plaintiff’s Second Request for Production of Documents on May 21, 2014, filed a Supplemental Response to the Second Request for Production of Documents on September 11, 2014 and filed a Second Supplemental Response to Plaintiff’s Second Request for Production of Documents on November 24, 2014. These filings required Plaintiff to file a Motion to Compel Production of Documents on or about December 4, 2014, resulting in a hearing before the Court on May 19, 2015.

c. Plaintiff served his Second Request for Admissions on or about May 14, 2015. After months of trying to resolve the sufficiency of Defendant’s Response to this Second Request, on or about October 15, 2015, Plaintiff filed a Motion to Determine Sufficiency of Defendant’s Response to Plaintiff’s Second Request for Admissions. Defendant served a Supplement to its Response to Plaintiff’s Second Request for Admissions on or about November 19, 2015 which did not resolve the dispute. A Second Supplemental Response to Plaintiff’s Second Request for Admissions was served on December 14, 2015 and Plaintiff thereupon withdraw his Motion to Determine Sufficiency of Defendant’s Response to Plaintiff’s Second Request for Admissions.

23. In addition, Plaintiff’s counsel was constrained to protect the interests of Plaintiff with respect to an emergency petition in the Court of Common Pleas in Philadelphia County (PMA vs. PSU) requiring an appearance

in such Court on June 22, 2015, the representation of Plaintiff's father, John McQueary, when he was deposed by PMA and PSU for said Philadelphia County lawsuit in State College on July 23, 2015 and the representation of the Plaintiff when he was deposed by PMA and PSU on August 26, 2015.

24. In addition, Plaintiff's counsels attended two conferences with the Court in Chester County Court Chambers (one of January 20, 2015 and the other on December 15, 2015), and participated in numerous conference calls with the Court.

25. On May 31, 2016, Defendant filed a second Motion to Stay in this matter.

26. Jury selection in this matter consumed 2 days, and the trial from opening argument to Jury Verdict took 9 days.

27. Plaintiff also prepared and filed proposed Findings of Fact and Conclusions of Law re Count 1 (Whistleblower) on November 10, 2016.

28. Plaintiff's counsels submit that representation of the Plaintiff in this matter required skill, experience and perseverance in order to obtain the jury verdict on Counts 2 and 3 and the Court's Award on Count 1.

29. The attorneys employed by the firm of Strokoff & Cowden, P.C. regularly keep contemporaneous records of professional time spent on each particular matter for which it is engaged. According to those records, if billed at its normal billing rates at the times the professional services were rendered from November 11, 2011 through November 10, 2016, said bills for

professional attorney time only would have amounted to \$497,881. See Strokoff Affidavit attached as Exhibit C hereto.

30. Attorney Fleming's services were critical to the success of this litigation. He provided valuable input continuously in conferences with Attorney Strokoff and the Plaintiff concerning strategy, evaluation of evidence, developed legal arguments and research, attended many depositions and he fully participated in conferences with the Court, jury selection and in the trial of this matter.

31. Attorney Fleming generally provides services on a flat fee basis and, therefore, generally does not keep detailed records of his time spent in rendering services in a particular matter. However, Attorney Fleming's normal hourly rate is \$275 and he estimates he spent approximately 500 hours of his time representing the Plaintiff since November 10, 2011 through November 30, 2016.

32. In its Order of November 30, 2016, the Court awarded \$4,974,048 to the Plaintiff; one-third of that amount comes to \$1,658,016.

33. A contingency fee is the only way, for all practical intents and purposes, for a Whistleblower to obtain legal representation against a large defendant with enormous financial resources.

34. Plaintiff submits that it is appropriate, under 43 P.S. §1425, for the Court to award to the Plaintiff, under Count I of the Complaint, the additional sum of \$1,692,657.14 for costs of litigation, including reasonable attorneys fees and witness fees.

WHEREFORE, Plaintiff prays that the Court award him  
\$1,692,657.14 as reasonable costs of litigation in this matter.

Respectfully submitted,

STROKOFF & COWDEN, P.C.

By: 

Elliot A. Strokoff  
I.D. No. 16677  
132 State Street  
Harrisburg, PA 17101  
(717) 233-5353

DATE: 12/12/16

FLEMING LAW OFFICE

By: 

William T. Fleming, Esq.  
111 Sowers Street, Suite 330  
State College, PA 16801  
814-278-5280

DATE: 12/14/16

Exhibit A  
Deposition Costs

Date	Deponent	Location	Cost
11/4/13	Mark Sherburne	State College, PA	\$ 532.00
11/6/13	Erikka Runkle	State College, PA	628.00
11/6/13	David Joyner	State College, PA	349.00
12/10/13	Joseph Donscecz	State College, PA	319.00
12/10/13	Fran Ganter	State College, PA	439.00
6/12/14	Fran Ganter (cont.)	State College, PA	205.00
6/19/14	Lisa Powers	State College, PA	304.00
6/20/14	Tom Harmon	Harrisburg, PA	240.75
10/7/14	Rodney Erickson	State College, PA	313.00
5/22/15	Tom Bradley	Philadelphia, PA	475.70
7/16/15	Rodney Erikson	State College, PA	232.35
7/21/15	Cynthia Baldwin	Pittsburgh, PA	326.25
10/5/15	Steve Garban	State College, PA	280.90
3/9/16	Gary Schultz	State College, PA	411.20
3/18/16	Graham Spanier	State College, PA	529.65
4/1/16	Tim Curley	State College, PA	270.90
5/4/16	William Mahon	State College, PA	266.50
5/31/16	Wendell Courtney	Harrisburg, PA	301.85
6/6/16	Brett Senior	Conshohocken, PA	467.01
6/6/16	Andy Talley	Villanova, PA	149.16
6/6/16	Matt Rhule	Philadelphia PA	469.53
10/12/16	Earnest Wilson	Elizabeth City, NC	405.29
Total			\$7,916.04

Exhibit B  
Costs Advanced

2/10/14	Brenda S. Shaffer Transcript of AM Sessions of Preliminary Hearing of Curley, Spanier & Schultz	\$208.50
2/11/14	Nativa Wood, Chief Court Reporter Transcript of PM Sessions of Preliminary Hearing of Curley, Spanier & Schultz	98.00
12/3/14	Prothonotary-Centre County fee (Motion to Seal)	50.00
6/18/15	Philadelphia Court of Common Pleas (PMA v PSU) Copy of PMA Second Amended Complaint, PSU Answer, Reply to New Matter	11.00
6/18/15	Philadelphia Court of Common Pleas (PMA v. PSU) Copy of Exhibits A, B, and C of Second Amended Complaint	29.60
6/25/15	Ann Mullen, RPR Transcript of PMA v. PSU oral argument 6/22/15	<u>90.00</u> \$487.10

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MICHAEL J. MCQUEARY,  
Plaintiff

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THE PENNSYLVANIA STATE  
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Defendant

Docket No. 2012-1804

(Judge Gavin)

**AFFIDAVIT OF ELLIOT A. STROKOFF, ESQUIRE**

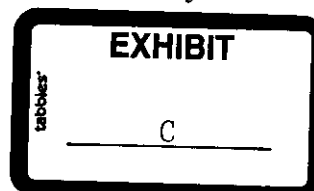
Elliot A. Strokoff, Esquire does depose and say that:

I have been a shareholder of the firm of Strokoff & Cowden, PC  
(the "Firm") since 1987.

For decades, it has been the Firm's practice that each attorney in  
the Firm contemporaneously maintains a detailed daily time sheet of work  
performed for all clients, which detailed itemizations are regularly entered into  
the Firm's electronic data system by the Firm's bookkeeper in the ordinary  
course of business.

At the very beginning of each calendar year for decades, the Firm  
issues a Statement of Normal Hourly Fees and Charges for that calendar year.  
Attached as Exhibit 1 to this Affidavit are the Statements of Normal Hourly  
Fees and Charges the calendar years 2011 through 2016. (Because of the  
addition of an associate in the Summer of 2013, an Amended Statement of  
Normal Hourly Fees and Charges 2013 was issued).

The normal hourly rate for Elliot Strokoff for calendar year 2011  
was \$275, for calendar year 2012 was \$275, for calendar year 2013 was

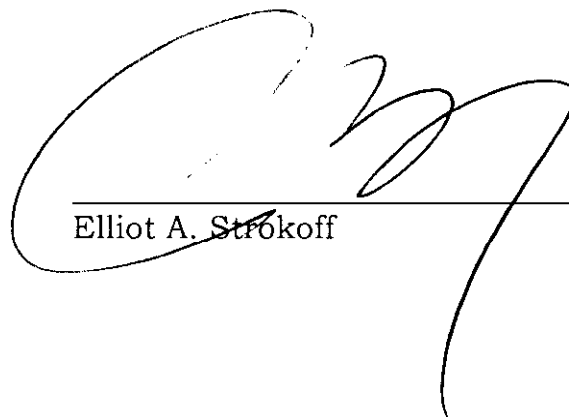


\$280, for calendar year 2014 was \$290, for calendar year 2015 was \$300 and for calendar year 2016 was \$310. Less senior attorneys in the firm have lesser hourly rates as is set forth in the Statement of Normal Hourly Fees and Charges.

While I rendered most of the professional service in this case, other members of the firm rendered service, including legal research, as well.

I have reviewed the detailed accounts of the professional time spent by the attorneys of Strokoff & Cowden, P.C. on matters related to the case of McQueary v. Penn State, as recorded in the Firm's electronic data system for work performed by the members of the Firm from November 13, 2011 through November 30, 2016. That professional time totaled 1,763.95 hours, which if billed at the then applicable hourly rates, would have amounted to \$497,881.00.

I, Elliot A. Strokoff, certify that the statements made in the foregoing Affidavit are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Elliot A. Strokoff

DATE: 12/12/16

STROKOFF & COWDEN, P.C.

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January 3, 2011

**STATEMENT OF NORMAL HOURLY FEES AND CHARGES**  
**CALENDAR YEAR 2011**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

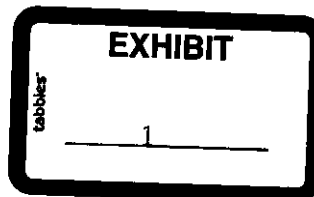
Normal hourly rates are \$275.00 per hour for senior attorneys, and \$185.00 per hour for services of other attorneys. The time of law clerks is billed at \$80.00 per hour. Our certified paralegal is billed at \$60.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

In addition to the hourly fees, we bill for costs. Costs are our out-of-pocket expenses, such as filing fees, transcripts, photocopies, long-distance telephone calls, telecopier charges and travel expenses. Costs are billed directly, without mark-up.

It is our firm's practice to send out bills within the first three working days of the month. We request that monthly bills be timely paid. Unless arrangements to the contrary are made with the lead attorney representing the client, payments not made within twenty (20) days of the date of the bill are regarded as untimely, and will be subject to a 1 ¼% per month interest charge.

Please note that because we bill on a monthly basis, and because costs are sometimes not known when a bill is sent out, you may, on occasion, receive a bill for costs after a matter is otherwise concluded.

Time records for professional services rendered and records of costs are maintained and are available to the client upon request.



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January 3, 2012

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**CALENDAR YEAR 2012**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

Normal hourly rates are \$275.00 per hour for senior attorneys, and \$190.00 per hour for services of other attorneys. The time of law clerks is billed at \$80.00 per hour. Our certified paralegal is billed at \$60.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

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January 2, 2013

**STATEMENT OF NORMAL HOURLY FEES AND CHARGES**  
**CALENDAR YEAR 2013**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

Normal hourly rates are \$280.00 per hour for senior attorneys, and \$200.00 per hour for services of other attorneys. The time of law clerks is billed at \$80.00 per hour. Our certified paralegal is billed at \$60.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

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August 1, 2013

**STATEMENT OF NORMAL HOURLY FEES AND CHARGES**  
**CALENDAR YEAR 2013**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

Normal hourly rates are \$280.00 per hour for senior attorneys, and \$125.00 to \$200.00 per hour for services of other attorneys. The time of law clerks is billed at \$95.00 per hour. Our certified paralegal is billed at \$60.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

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January 2, 2014

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January 2, 2015

**STATEMENT OF NORMAL HOURLY FEES AND CHARGES**  
**CALENDAR YEAR 2015**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

Normal hourly rates are \$300.00 per hour for senior attorneys, and \$150.00 to \$235.00 per hour for services of other attorneys. The time of law clerks is billed at \$95.00 per hour. Our certified paralegal is billed at \$70.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

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January 4, 2016

**STATEMENT OF NORMAL HOURLY FEES AND CHARGES**  
**CALENDAR YEAR 2016**

Our bills for professional services rendered are charged on a basis of hourly fees plus costs.

Normal hourly rates are \$310.00 per hour for senior attorneys, and \$160.00 to \$250.00 per hour for services of other attorneys. The time of law clerks is billed at \$95.00 per hour. Our certified paralegal is billed at \$70.00 per hour. Fractions of hours are computed in periods of not less than one-tenth (1/10) of an hour. We do not bill for clerical or secretarial time. Time is billed at actual time spent and is not adjusted for result achieved or for any other reason.

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MICHAEL J. MCQUEARY,  
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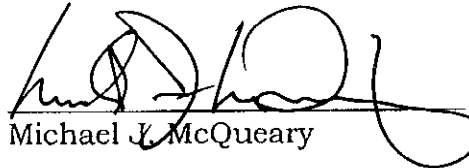
IN THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

DOCKET NO. 2012-1804

JURY TRIAL DEMANDED

**VERIFICATION**

I, **Michael J. McQueary**, certify that the statements made in the foregoing Petition for Costs of Litigation are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Michael J. McQueary

DATE:

Dec. 13, 2016

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MICHAEL J. MCQUEARY,  
Plaintiff

v.

THE PENNSYLVANIA STATE  
UNIVERSITY,  
Defendant

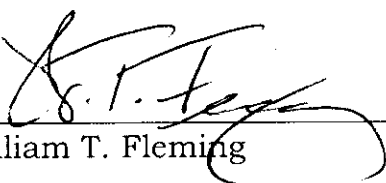
IN THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

DOCKET NO. 2012-1804

JURY TRIAL DEMANDED

**VERIFICATION**

I, **William T. Fleming**, Esquire, certify that the statements made in the foregoing Petition for Costs of Litigation are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
William T. Fleming

DATE:

MICHAEL J. MCQUEARY,  
Plaintiff

v.

THE PENNSYLVANIA STATE  
UNIVERSITY,  
Defendant

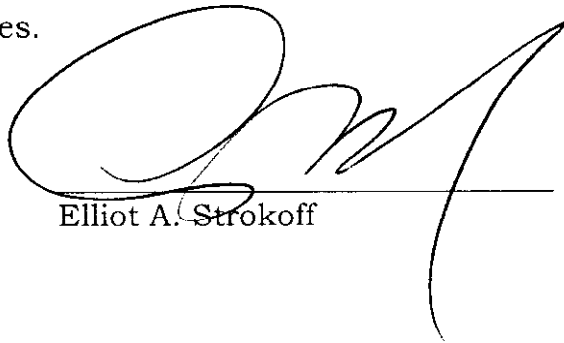
IN THE COURT OF COMMON PLEAS  
CENTRE COUNTY, PENNSYLVANIA

DOCKET NO. 2012-1804

JURY TRIAL DEMANDED

**VERIFICATION**

I, **Elliot A. Strokoff**, Esquire, certify that the statements made in the foregoing Petition for Costs of Litigation are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Elliot A. Strokoff

DATE: 12/12/16

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

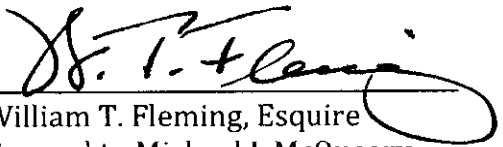
CIVIL DIVISION

MICHAEL J. MCQUEARY,	:	
Plaintiff	:	
	:	No. 2012-1804
	:	
v.	:	Jury Trial Demanded
	:	
	:	
THE PENNSYLVANIA STATE	:	
UNIVERSITY,	:	
Defendant	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of law that a true and correct time stamped copy of Plaintiff's Petition for Costs of Litigation was served upon counsel to the Defendant, by mailing a copy of the same on the 14 day of December, 2016, via United States Mail, to the following address:

Nancy Conrad, Esquire  
Williams and White, LLP  
3701 Corporate Parkway, Suite 300  
Center Valley, PA 18034-8233

  
William T. Fleming, Esquire  
Counsel to Michael J. McQueary  
Fleming Law Offices  
111 Sowers Street, Suite 330  
State College, PA 16801

December 14, 2016