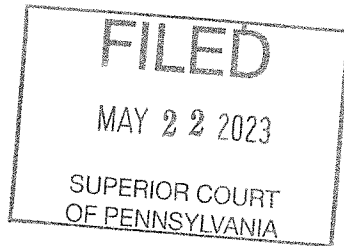


IN THE SUPERIOR COURT OF PENNSYLVANIA

IN RE: BRENDA DAVIS,

CLERK OF COURTS,

Appellant.



CRIMINAL DIVISION

887 WDA 2022

**REPRODUCED
RECORD ("R.R.")**

Filed on Behalf of:

Brenda Davis, Clerk of
Courts

**Counsel of Record for
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IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

IN RE:

MD-898-2021

BRENDA DAVIS
CLERK OF COURTS

CRIMINAL CONTEMPT
OF COURT PROCEEDING IN THE
ABOVE-ENTITLED CAUSE
BEFORE THE HONORABLE
JOHN F. DISALLE, PRESIDENT
JUDGE, ON THURSDAY,
AUGUST 4, 2022

APPEARANCES:

James DePasquale, Esquire
Charles Gallo, Esquire
Robert Gallo, Esquire
Representing Ms. Davis

FILED
2022 AUG -5 PM 1:42
CLERK OF COURTS
WASHINGTON CO PA

ORDER OF SENTENCE

AND NOW, this 4th day of August, 2022, following a hearing, the Court finds that Ms. Brenda Davis, being an officer of the Court, committed contempt by:

- Refusing to follow the Court's Order of November 23, 2021;
- Locking the vault, restricting access to the Juvenile files;
- Refusing to submit to the Deputies;
- Refusing to come into the courtroom to be addressed by the Court; and
- Engaging in misbehavior immediately outside the courtroom, which created such a disruption that it spilled over three floors of the courthouse until Ms. Davis absconded from the courthouse.

Ms. Davis' refusal to come into the courtroom to be addressed, and her loud misbehavior immediately outside the courtroom is deemed by case law to be "in the presence of the Court," such that she is subject to Direct Criminal Contempt proceedings. This Court further finds that Ms. Davis committed these acts with the intent to obstruct the proceedings, and that Ms. Davis' misconduct did actually obstruct the administration of justice.

The Court further finds that no civil remedy is appropriate in this case. In consideration of these facts, the Court finds Ms. Davis guilty and sentences her on the charge of Direct Criminal Contempt, a violation of 42 PACS §4132, an ungraded Misdemeanor, to pay the costs of prosecution and to pay a fine of \$5,000 (assessment of her ability to pay the fine placed on the record). The Court further sentences Ms. Davis to be incarcerated in the Washington County Correctional Facility for no less than 15 days to no more than six (6) months.

Upon completion of her minimum sentence, Ms. Davis shall be paroled to the supervision of the Washington County Adult Probation Office and shall be subject to all terms and conditions of the Washington County Adult Probation Office, including those General Conditions of Probation and Parole read to her this date in Open Court. In addition to those conditions, any further refusal to follow a court order on the part of Ms. Davis shall be considered a violation of her parole.

Upon release from the Washington County Correctional Facility, Ms. Davis shall immediately report to the Washington County Adult Probation Office for intake.

(Post-sentencing rights given but not transcribed.)

NOTICE OF GENERAL CONDITIONS OF PROBATION AND PAROLE

1. The Defendant shall report to their Probation or Parole Officer (PO) as directed; and permit their PO to visit them at their residence or place of employment; and may be subject to warrantless searches of their residence, vehicle, property, and person and the seizure and appropriate disposal of any contraband found.
2. The Defendant shall report to their PO within 24 hours or the next business day after being released from any institution.
3. The Defendant shall only reside at a residence approved by their PO; and the Defendant shall not change their place of residence without the approval of their PO. The Defendant shall not reside with someone who is currently on probation or parole without the approval of their PO.
4. The Defendant shall not travel outside of the Commonwealth of Pennsylvania without a travel permit from their PO.
5. The Defendant shall notify their PO within 72 hours of any change in employment status. Pay stubs must be submitted to verify employment status
6. The Defendant shall abide by a curfew imposed by the Court, to be determined by their PO.
7. The Defendant shall not purchase, use or possess alcoholic beverages, and shall not enter bars or taverns.
8. The Defendant shall not unlawfully possess or use any controlled substances, except as prescribed by a licensed physician for a legitimate, medical need, or as part of a licensed treatment program.
9. The Defendant shall submit to random and periodic testing to determine the use and presence of any illegal substances and alcoholic beverages.
10. The Defendant shall not possess any firearms or offensive weapons in their residence, on their person, or in their vehicle.

11. The Defendant shall refrain from any assaultive, threatening or harassing behavior.
12. The Defendant shall not violate any municipal, state or federal laws, and shall notify their PO immediately of any new arrest, investigation or contact with law enforcement authorities.
13. The Defendant shall pay all fines, costs and restitution imposed by the Court immediately or in accordance with a schedule set forth by the Court or by the Washington County Collections and Disbursement Unit.
14. A Defendant who is required to wear a wrist or ankle monitor shall not remove or tamper with their monitor for any reason. If there is a problem with the monitor, the Defendant shall immediately notify their PO of same. Self-help in the adjustment or removal of a monitor may be considered a violation of their probation or parole.

BY THE COURT,

/s/ John F. DiSalle P.J.
JOHN F. DiSALLE, PRESIDENT JUDGE

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CIVIL DIVISION

IN RE: ADOPTION OF LOCAL RULES)
OF JUVENILE PROCEDURE) No. 2021-1
L-120 AND L-1120)

ADMINISTRATIVE ORDER

AND NOW, this 23rd day of November, 2021, the Court having adopted Local Rules of Juvenile Procedure L-120 and L-1120, and further action is necessary to effectuate the orderly transition of duties and administration of the juvenile docket, including maintaining the official court record in juvenile cases, it is hereby ORDERED, ADJUDGED, and DECREED that the Chief Juvenile Probation Officer, and any necessary court staff, shall enter the office of the Clerk of Courts to take custody of all juvenile court files for juvenile delinquency and dependency cases from the Clerk of Courts. In accordance with Local Rules L-120 and L-1120, the Juvenile Probation Office is the designated custodian for the juvenile court files.

The Chief Juvenile Probation Officer shall ensure that a notation is made of each juvenile court file transferred from the care of the Clerk of Courts to the Juvenile Probation Office. The Clerk of Courts, and her staff, shall cooperate in the orderly transfer of the files.

The Sheriff, or his designee, is DIRECTED to enforce this Order. If the Clerk of Courts, or a member of her staff, refuses or otherwise fails to comply with this Order, the Sheriff shall immediately attach and detain the individual pending proceedings for contempt pursuant to 42 Pa. C.S.A. § 4101, *et seq.*, before the undersigned.

BY THE COURT:

John F. DiSalle, President Judge, P.J.

From the record

ATTEST:

PROTHONOTARY
LAURA H. HOUGH, PROTHONOTARY
My Term Expires First Monday in January, 2024

RR005

FILED

NOV 24 AM 9:56

PROTHONOTARY
WASHINGTON CO. PA

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

IN RE: BRENDA DAVIS) No. MD-2021- 898

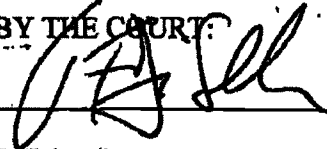
ORDER

AND NOW, this 29th day of November, 2021, in consideration of the direct contempt proceedings which commenced on November 24, 2021, as a result of the contempt of Brenda Davis, an officer of the court elected to the office of Clerk of Courts of Washington County, by her failure and refusal to comply with the Administrative Order dated November 23, 2021, regarding the transfer of juvenile court files from the Clerk of Courts Office to the Juvenile Probation Office, her interference with the Juvenile Probation Office staff attempting to effectuate the Court's order, her locking the vault door of the public office to prevent Court staff from access to the files, her resistance to the Sheriff's deputies attempting to enforce the Court's order, her disruption of the courthouse by her behavior and of the Court for having to adjourn other proceedings in order to address her contempt, her refusal to enter the courtroom in order to be so addressed, and her subsequent departure from the courthouse, it is hereby ORDERED that the direct criminal contempt proceedings pursuant to 42 Pa. C.S.A. § 4101, *et seq.*, § 4132, shall reconvene on the 2nd Day of December, 2021, at 1:30 p.m., at which time Brenda Davis shall appear before the undersigned and be prepared to answer for her contumacious behavior.

Failure to appear at the date and time set forth above shall result in a bench warrant for the defendant's arrest.

WASHINGTON COUNTY CLERK OF COURTS
2021 NOV 29 AM 11:52
FILED

BY THE COURT:



P.J.

John F. DiSalle, President Judge

1 IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY
COMMONWEALTH OF PENNSYLVANIA
2 CRIMINAL DIVISION

3

4

5 IN RE:)
6 BRENDA DAVIS,) MD-898-2021
CLERK OF COURTS)

7

- - -

8

9 TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN F. DiSALLE,
PRESIDENT JUDGE
10 COURTROOM NO. 2
11 WEDNESDAY, NOVEMBER 24, 2021

12

- - -

13

14

15

16

17

18

Transcribed by:
Christine B. Mumper
Official Court Reporter

19

20

21

22

23

24 Transcript filed in the Clerk of Courts, this 2nd
day of December, 2021.

25

1 P-R-O-C-E-E-D-I-N-G-S

2 - - -

3 (Thereupon, the hearing commenced at
4 10:58 a.m.)

5 - - -

6 THE COURT: This is the matter of the
7 events regarding the Administrative Order
8 dated November 23, 2021, the Adoption of
9 Local Rules of Juvenile Procedure L-120 and
10 L-1120, filed at 2021.

11 And of course, this process began
12 approximately a month ago, that the --
13 following the Clerk of Courts Unilateral
14 Waiver of Duties, that we began, the Court
15 and Court Administration began working on an
16 alternative file management procedure, in
17 accordance with the state juvenile rules and
18 the local juvenile rules.

19 This morning, we attempted to move the
20 files to effectuate that start date of
21 November 29th, and we've had incidents.

22 I'm going to -- where's Mr. Grimm?
23 Can you come forward?

24 - - -

25

1 DISTRICT COURT ADMINISTRATOR PATRICK R. GRIMM
2 having been first duly sworn, was examined by the
3 Court and testified as follows:

4 THE COURT: So Mr. Grimm, do you want
5 to -- let's swear you in.

6 And of course, Patrick R. Grimm is the
7 District Court Administrator in Washington
8 County. Sir, do you want to give a brief
9 summation of what transpired when you
10 attempted to do the move?

11 MR. GRIMM: Do you mind if I take this
12 off?

13 THE COURT: No, I do not mind, you can
14 take that off.

15 MR. GRIMM: This morning, your Honor,
16 I took your Administrative Order regarding
17 the transfer of the physical files for the
18 juvenile dependency and delinquency cases
19 from the Clerk of Courts to the Juvenile
20 Probation Office, to the Prothonotary's
21 Office, it was approximately 9:30 to 9:35
22 this morning.

23 I filed the order. I had multiple
24 copies time stamped. I provided that order
25 to the Chief Juvenile Probation Officer,

1 Amanda Gallagher. I also gave the order to
2 two sheriff's deputies. The two deputies and
3 Chief Gallagher and me, we went over to the
4 Clerk of Courts' office to serve the order,
5 and to discuss moving the files out of the
6 Clerk of Courts' office with the Clerk of
7 Courts, Brenda Davis.

8 To summarize, Ms. Davis, we provided
9 her -- Amanda Gallagher provided her with the
10 order, started to explain it. Ms. Davis took
11 her cell phone out and began recording us.

12 As we tried to attempt to discuss the
13 order, Ms. Davis indicated she wasn't going
14 to read it. She also, to the best of my
15 recollection, indicated that -- or said that
16 she was an elected official, she had 1620
17 rights. She didn't have to follow the order.

18 She also said she was waiting for
19 Commonwealth Court to act. I believe at one
20 point, someone else came in the office and
21 began recording what was going on, I believe
22 it was the Prothonotary. It was Laura Hough,
23 the Prothonotary. And then after that, one
24 of the deputies attempted to speak to
25 Ms. Davis to sort of, in my estimation, tried

1 to work out a resolution, you know, to get
2 her to read the order and just comply.

3 Ms. Davis started to, I guess, in my
4 description, argue with the deputy. After
5 that, I believe the deputies went to detain
6 Ms. Davis. At one point, she shut the vault
7 door, and when she was doing it she turned
8 the handle. So I mean, from my view, it
9 appeared that the vault had been locked by
10 doing that. It's my understanding that the
11 vault is where the juvenile files are kept in
12 that office.

13 THE COURT: So the vault door was open
14 when you first arrived, and she closed it and
15 locked it in your presence?

16 MR. GRIMM: Yes.

17 THE COURT: And what happened after
18 that?

19 MR. GRIMM: So after that, I mean, at
20 one point, the deputies, they went to detain
21 Ms. Davis, and she appeared to resist at some
22 point.

23 And eventually, after that, Ms. Davis
24 at one point complained of some sort of
25 medical issue, I think that her back hurt.

1 Medical attention was sought for Ms. Davis.

2 I believe the sheriff's department
3 tried to bring Ms. Davis to the courtroom.
4 My understanding from one of the deputies is
5 that she refused to enter courtroom, your
6 courtroom, your Courtroom No. 2 on the second
7 floor of the courthouse.

8 At one point, Ms. Davis went back
9 downstairs to her office. At another point,
10 the EMT's arrived. I believe they checked
11 Ms. Davis out. And then at some point,
12 Ms. Davis left the courthouse to seek medical
13 attention.

14 THE COURT: Okay. But your personal
15 observation ended in the Office of the Clerk
16 of Courts; is that right?

17 MR. GRIMM: Yes.

18 THE COURT: And to dispel something
19 that was said in chambers, there wasn't an
20 arrival of 20 people into the Clerk of
21 Courts?

22 MR. GRIMM: No. No, when we arrived
23 at the Clerk of Courts, it was me, the Chief
24 Juvenile Probation Officer, and two deputies.

25 At some point, when Ms. Davis began

1 refusing to comply, I believe a third deputy
2 sheriff came. But we did not have anyone
3 else with us. There were no probation
4 officers or other court staff, it was
5 really -- it was just the four of us
6 initially, and then a third deputy arrived.

7 THE COURT: Before we go any further,
8 Mr. Logue, do you want to step forward,
9 please.

10 And you are Attorney Sean Logue;
11 correct?

12 SEAN LOGUE, ESQUIRE
13 was examined by the Court and said as follows:

14 MR. LOGUE: May it please the Court,
15 Sean Logue, not representing any party.

16 THE COURT: I just wanted to put that
17 on the record, because you did, at my
18 request, come up, and you even offered to
19 make suggestions to help resolve today.

20 So I wanted to just make it clear that
21 you were here, you did have discussion in
22 chambers, but you are not representing
23 Ms. Davis?

24 MR. LOGUE: That's correct.

25 THE COURT: Do you have anything else

1 that you want to put on the record?

2 MR. LOGUE: I can only tell you my
3 very tiny part is I'm here in the courthouse.
4 I have two PFA's, one scheduled for 11:15 and
5 the other one scheduled for 11:45.

6 I got here early, like I always do, to
7 speak to opposing counsel. When I walked in,
8 I was greeted by an employee from the
9 Prothonotary's office, who handed me a copy
10 of your Administrative Order.

11 As I walked down the hall, I walked
12 past about 20 large people. They appeared to
13 be employees of Adult Probation. I'm
14 six-foot-two, 240 pounds, and there were
15 gentlemen bigger than me, walking past me.
16 And I was told that those were the people
17 that arrived at the Prothonotary's office to
18 take the files, and so --

19 THE COURT: You just said the
20 Prothonotary's office?

21 MR. LOGUE: I'm sorry, forgive me.
22 The Clerk of Courts office.

23 THE COURT: And you did not actually
24 see that; correct?

25 MR. LOGUE: Correct, I did not see

1 that.

2 THE COURT: And what hallway are we
3 talking about?

4 MR. LOGUE: I entered through the
5 Strawberry Square (sic) side entrance. And
6 as soon as I made a right, this group of 20
7 large people were walking past me.

8 THE COURT: Well, we do have people
9 that were to help move the physical files
10 today. I don't know who they are. I assume
11 they are from Juvenile Probation.

12 Anything else you want to put on the
13 record?

14 MR. LOGUE: No.

15 Only that your Honor called because I
16 frequently do work for the Republican Party
17 of Washington County, and Ms. Davis is a
18 Republican. And I'm friendly with Ms. Davis,
19 as well as, I hope that you and I are
20 friendly. I appear in front of you quite
21 often.

22 You asked if I could mediate or help
23 out in any way. Your Honor made the
24 suggestion that the most important thing to
25 him was to get the files moved in an orderly

1 transition. You asked me if I had any
2 suggestions. And I suggested perhaps getting
3 the combination of the vault from Ms. Davis,
4 in that maybe that would put off a potential
5 contempt hearing.

6 The most important thing for me was
7 her health, because she was complaining of
8 back pain from being handcuffed, I was told.
9 I did not see the handcuffing, but I was told
10 she was handcuffed at some point.

11 Your Honor liked the suggestion, and I
12 went down to speak with Ms. Davis, along with
13 Tony Andronas, the Sheriff-Elect.

14 I spoke to Ms. Davis, but Ms. Davis
15 was unable to respond to a potential
16 suggestion of turning over the vault
17 pass code, because she was complaining of
18 heart palpitations, and she said that her arm
19 started to hurt. I'm not a medical expert,
20 but I know that to be a potential sign of
21 heart issues, and so I suggested the
22 paramedic check her blood pressure.

23 THE COURT: The paramedics were
24 already there by the time you had this
25 conversation?

1 MR. LOGUE: Correct.

2 Sheriff-Elect Andronas and I went back
3 up to chambers to inform your Honor, and I
4 think that ends my part of the story.

5 THE COURT: Okay. So you weren't
6 there when Ms. Davis exited the courthouse?

7 MR. LOGUE: No, I was not.

8 THE COURT: On her own, without any
9 assistance, I'm told. You were not there?

10 MR. LOGUE: I was not there, and I did
11 not suggest that she leave. I did not play
12 any part in her leaving the courthouse.

13 THE COURT: I wasn't implying that,
14 that you did. I'm just saying you didn't see
15 that part.

16 MR. LOGUE: Correct.

17 THE COURT: All right.

18 As we all discussed, Chief Deputy
19 Andronas and yourself and I, there was
20 never a suggestion that we interfere with the
21 medical treatment. We all felt that that was
22 the primary, our first priority; correct.

23 MR. LOGUE: Your Honor intimated to me
24 that you believed -- and you did not say
25 these words.

1 But you made the comment that a person
2 cannot claim some kind of pain to get out of
3 a hearing, or something to that effect.

4 I then --

5 THE COURT: So you're not putting
6 words in my mouth, but you are?

7 MR. LOGUE: No. I'm saying that there
8 was a suggestion made that she needs to be at
9 the hearing, and when, and only when, the
10 paramedic came up -- when and only when the
11 paramedic came up and said that she's having
12 these heart palpitations --

13 THE COURT: No, I don't believe he
14 said that. And he's going testify, but since
15 you don't represent her, you won't be cross-
16 examining. But he said that her heart rate
17 was a little elevated, but everything else
18 was normal.

19 MR. LOGUE: I'm okay with that, yes.

20 THE COURT: Well, you just started to
21 say the medic said that she was having heart
22 palpitations.

23 That was not said in my presence.

24 MR. LOGUE: The -- the -- the -- I
25 believe the paramedic said she he checked her

1 for complaints of the heart palpitations, and
2 I'm not disputing that he said that her blood
3 pressure was elevated. And at that point in
4 time, your Honor was very clear that you're
5 not going to stand in the way of her health,
6 and that -- and that was the last word on the
7 subject.

8 THE COURT: All right. Thank you,
9 sir. Anything else?

10 MR. LOGUE: No, nothing else.

11 THE COURT: Thank you.

12 I know that the medics need to get
13 going. I wanted to put that on.

14 Sir, where's Mr. Golnas? Still here?

15 CHIEF DEPUTY ANDRONAS: Your Honor, if
16 I may approach?

17 THE COURT: You may.

18 (Discussion off the record.)

19 CORPORAL EDMUND SCHELL

20 called as a witness, having been first duly sworn,
21 was examined by the Court and testified as
22 follows:

23 THE COURT: State your full name and
24 title for the record, please.

25 CORPORAL SCHELL: Corporal Edmund

1 Schell, spelled S-c-h-e-l-l.

2 THE COURT: And you were one of the
3 deputies assigned to enforce the order and
4 see to the orderly transition of these files?

5 CORPORAL SCHELL: I was.

6 THE COURT: And tell me your
7 observations this morning.

8 CORPORAL SCHELL: This morning, we
9 assisted Patrick Grimm and the Chief Juvenile
10 Probation Officer to obtain records from the
11 Clerk of Courts.

12 At this time, Deputy Cameron and I,
13 when we went to the Clerk of Courts, we stood
14 out in the hallway and observed the
15 situation. Patrick Grimm and the JPO officer
16 handed a court order to Ms. Davis, who is the
17 Clerk of Courts.

18 At this time, it seemed to, under my
19 observation, that Ms. Davis became very
20 argumentative. At this time, I came into the
21 Clerk of Courts, attempted to speak with
22 Ms. Davis, and Ms. Davis became very
23 argumentative with me.

24 At this time, Ms. Davis ran past me,
25 ran to the vault door of the Clerk of Courts,

1 shut the door and locked it. We then
2 attempted to place Ms. Davis in handcuffs.
3 This is when she resisted our arrest. After
4 placing the handcuffs on Ms. Davis, she
5 complained of a back injury.

6 We then removed the handcuffs and then
7 escorted her up here to your courtroom. That
8 is whenever I called for medical attention
9 for Ms. Davis.

10 THE COURT: And you brought her up to
11 this Courtroom No. 2.

12 CORPORAL SCHELL: Yes.

13 THE COURT: And I was told there was
14 an issue with her coming into the courtroom?

15 CORPORAL SCHELL: She refused to come
16 into the courtroom.

17 THE COURT: And you didn't make an
18 effort to --

19 CORPORAL SCHELL: I'm sorry, Judge --

20 THE COURT: You and your fellow
21 deputies didn't make -- took no steps to
22 compel her to come in?

23 CORPORAL SCHELL: Our fear at that
24 time was she was complaining of a back
25 injury, and we did not want to make it any

1 worse if there was.

2 THE COURT: Was it you or one of your
3 fellow deputies that called for the EMT's?

4 CORPORAL SCHELL: I did, myself.

5 THE COURT: You made that call?

6 CORPORAL SCHELL: Yes.

7 THE COURT: So they arrived shortly
8 after?

9 CORPORAL SCHELL: Yes.

10 THE COURT: And they did attend to
11 her?

12 CORPORAL SCHELL: Yes.

13 THE COURT: And that was here, in the
14 second floor hallway?

15 CORPORAL SCHELL: No, she was attended
16 to on the first floor of the courthouse.

17 THE COURT: So at some point, she went
18 down the stairs on her own mobility?

19 CORPORAL SCHELL: Yes.

20 THE COURT: And then were you there
21 when she left the building?

22 CORPORAL SCHELL: Yes.

23 THE COURT: Place that on the record,
24 please. Tell me what you saw after that.

25 CORPORAL SCHELL: At this time,

1 whenever she walked downstairs to the
2 basement of the courthouse, after the medics
3 attended to her again, she got up on her feet
4 and walked out of the courthouse herself.

5 THE COURT: And so she went out the
6 side entrance?

7 CORPORAL SCHELL: Yes.

8 THE COURT: Anything else that --

9 CORPORAL SCHELL: No.

10 THE COURT: All right, thank you.
11 Deputy Rock?

12 DEPUTY PAUL ROCK
13 having been first duly sworn, was examined by the
14 Court and testified as follows:

15 THE COURT: State your full name, sir.

16 DEPUTY ROCK: Deputy Paul Rock,
17 R-o-c-k.

18 THE COURT: And you've been a deputy
19 at the Washington County Sheriff's Office as
20 long as I can remember.

21 DEPUTY ROCK: Yes, 16 years.

22 THE COURT: What did you observe
23 today?

24 DEPUTY ROCK: I was just up there for
25 support. I stood away from the incident at

1 first. After seeing what was going on, I
2 approached your courtroom by the steps.

3 And you know, she was complaining,
4 needing medical attention, which the deputies
5 were, you know, attending to. But a lot of
6 interference, when we went downstairs, you
7 know, people kept interfering with their cell
8 phones.

9 But as our intention was to get her
10 medical attention right away. She stated her
11 back hurt. She told us she forgot to take
12 her medication, which she kept wanting to
13 leave, and we kept advising her that, you
14 know, we wanted to get the court issue taken
15 care of.

16 But she could walk, she was walking,
17 you know. She walked away from us numerous
18 times. She ended up getting down to the
19 basement area where the rear metal detector
20 entrance is, the hallway. At that point, we
21 had other deputies that came and showed up to
22 help us.

23 One of the deputies, you know, came
24 over to help. And you know there was a
25 female there, I think it was Ms. Hough. She

1 shoved her cell phone, almost hit him in the
2 head. She was told to stop interfering.

3 At that time, Ms. Davis, you know she
4 was still, like, pushing away, trying to get
5 out the door, you know. We tried to slow her
6 down. We kept asking her, you know, the
7 medics to check her out.

8 You know, one minute she wanted the
9 medics to be there, the next minute she
10 didn't. In my experience, she just wanted to
11 get out of the courthouse. You know, every
12 chance she got, she was walking normal, you
13 know. But you know, we did get her medical
14 attention, but she really, in my eyes, didn't
15 give them a chance to check her out too much.

16 But that's basically it.

17 THE COURT: Okay. Thank you, sir.

18 Ms. Lindley, do you want to come
19 forward?

20 REGINA LINDLEY

21 having been first duly sworn, was examined by the
22 Court and testified as follows:

23 MS. LINDLEY: Can I take the mask off?

24 THE COURT: You may. State your name
25 for the record.

1 MS. LINDLEY: Regina Lindley,
2 L-i-n-d-l-e-y.

3 THE COURT: What is your position with
4 the Clerk of Courts?

5 MS. LINDLEY: I'm the Deputy Clerk of
6 Courts.

7 THE COURT: I'm sorry?

8 MS. LINDLEY: Deputy Clerk of Courts.

9 THE COURT: And I don't know if you
10 were there or not, but what I want to know is
11 are you able to open the vault and cooperate
12 with the transition --

13 MS. LINDLEY: I can open the vault.

14 THE COURT: If I could finish.

15 MS. LINDLEY: I'm sorry.

16 THE COURT: Are you willing to open
17 the vault, and are you able to?

18 MS. LINDLEY: Yes.

19 THE COURT: Are you willing to
20 cooperate with the transition of these files?

21 MS. LINDLEY: Yes.

22 THE COURT: In accordance with my
23 order?

24 MS. LINDLEY: Yes.

25 THE COURT: And you have management

1 authority over the other employees, you'll
2 see that everyone in the office cooperates?

3 MS. LINDLEY: Yes.

4 THE COURT: And I expect that if your
5 boss comes back to the office, that we still
6 have to have an orderly transition?

7 MS. LINDLEY: I understand that, but
8 I'm sure you also understand, your Honor,
9 that she is my immediate supervisor. So if
10 she stops me from doing something, I can't
11 continue doing that.

12 THE COURT: Well, I've issued an order
13 that -- do you understand if you get a phone
14 call from your boss saying shut the door,
15 that you are going to --

16 MS. LINDLEY: No, I don't mean that.
17 I mean if she comes back in.

18 THE COURT: I understand that you
19 can't control her, but if you are going to
20 follow her orders to obstruct justice and not
21 let us do that, you're going to be subject to
22 contempt, as well.

23 MS. LINDLEY: I'm not stating that I'm
24 doing that. I'm stating that if she comes
25 back into the office and takes over the

1 management again, then I have to do what she
2 says.

3 THE COURT: Well, that's what I'm
4 trying to make clear. I know you can't
5 control her, but if you are going to follow
6 her order and lock the vault door, her order
7 is not going to make you immune from a
8 contempt proceeding.

9 MS. LINDLEY: I didn't say that.

10 I understand that. I didn't say that
11 I would do that.

12 THE COURT: Well, that seems to be
13 what you're saying.

14 MS. LINDLEY: No.

15 THE COURT: So we're clear?

16 MS. LINDLEY: We're clear.

17 THE COURT: All right. So I'm going
18 send you down now with Ms. Gallagher and at
19 least a couple deputies, to make sure this
20 gets done.

21 Do you have any questions?

22 MS. LINDLEY: I don't.

23 THE COURT: Mr. Grimm, do you have
24 anything else you that we need to put on the
25 record?

1 MR. GRIMM: No, I don't believe so,
2 your Honor.

3 THE COURT: All right. I think we've
4 covered it.

5 Thank you, Ms. Lindley.

6 MS. LINDLEY: You're welcome.

7 THE COURT: Thank you, Mr. Grimm.

8 Thank you, everybody.

9 (Discussion off the record.)

10 THE COURT: We're back on the record
11 in the matter of the transfer of the juvenile
12 files.

13 And Mr. Grimm, the District Court
14 Administrator, you felt something needed to
15 be put on the record.

16 MR. GRIMM: Yes, your Honor. I just
17 thought to be clear for the record, to put on
18 information about prior to today, and the
19 history of moving the files.

20 On or about October 15, 2021, your
21 Honor entered an Administrative Order
22 promulgating Local Rules of Juvenile
23 Procedure, designating the Juvenile Probation
24 Office as the custodian of delinquency and
25 dependency files.

1 You also sent a letter to Ms. Davis,
2 indicating -- you know, explaining it and
3 then also indicating your hope or expectation
4 that she would cooperate with the transition
5 of the cases.

6 And I did want to put on the record
7 that on three separate occasions, we've
8 attempted to reach out to Ms. Davis, to
9 discuss the movement of the files. The first
10 two attempts, Amanda Gallagher, the Chief
11 Juvenile Probation Officer, wrote e-mails to
12 her. No response, I believe, was received.

13 On the third occasion, November 19th,
14 I wrote an e-mail to Ms. Davis, asking if she
15 would please meet with Amanda Gallagher and
16 discuss moving the files. She responded
17 back, and you know, basically rebuffed that
18 attempt.

19 So I just think it's important to
20 note, it wasn't as if we just showed up
21 today and nobody had any idea why you would
22 be doing this or anything like that. And all
23 the rules are effective shortly after today.

24 THE COURT: We had a meeting with her
25 and her then Solicitor, Mr. Makel, in

1 October. That was prior to October 15th, but
2 it was subsequent to the first unilateral
3 waiver that she filed.

4 And at that time, she said she was
5 going to file an amended waiver, which she
6 did. At that time, Mr. Makel told her that
7 these were not appealable orders.

8 MR. GRIMM: Yes.

9 THE COURT: In our presence.

10 There also -- the other -- she was
11 also on notice from the Salary Board creating
12 two new positions in juvenile for this
13 purpose, and then eliminating two positions
14 from her office, which I understand at that
15 public meeting, the deputies had to be called
16 to that, as well, so I was told.

17 MR. GRIMM: Yes. And Ms. Davis was
18 present in the meeting in human resources to
19 discuss the moving of that personnel. And
20 she knows that the abolishment of the
21 positions in her office, that's effective at
22 the beginning of next week.

23 THE COURT: And that's pursuant to
24 the -- the State Juvenile Rules allow the
25 Court to designate the Clerk of Courts or

1 another entity to manage those files?

2 MR. GRIMM: Yes, your Honor. The
3 State Rules of Procedure, I believe it's
4 Juvenile Rule of Procedure 120 and 1120,
5 which correspond with the local rule numbers
6 that we use. They provide that the custodian
7 or the filing office can be someone other
8 than the Clerk of Courts to do that.

9 And your rules, in accordance with the
10 rule-making authority that this Court has,
11 those local rules were provided to the
12 statewide rules committee, which approved
13 them, what was drafted locally, and then
14 published in the Pennsylvania Bulletin and
15 become effective 30 days thereafter, which is
16 Monday, the 29th.

17 And we're not open, the courthouse
18 isn't open between now and the 29th.

19 THE COURT: Is there anything else,
20 Mr. Grimm?

21 MR. GRIMM: No, your Honor.

22 THE COURT: Thank you.

23 MR. GRIMM: Thank you.

24 (Thereupon, at 11:34 p.m., the
25 proceedings were concluded.)

1 CERTIFICATE

2

3 I hereby certify that the proceedings and
4 evidence are contained fully and accurately in the
5 stenographic notes taken by me of the hearing of
6 the above-cause, and that this is a correct
7 transcript of the same.

8

9

10 /s/ Christine B. Mumper
11 Christine B. Mumper, Court Reporter

12

13

14

15 The foregoing record of the hearing of
16 the above-cause is hereby directed to be filed.

17

18

19 /s/ John F. DiSalle, P.J.
20 JOHN F. DISALLE, PRESIDENT JUDGE

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1 IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY
2 COMMONWEALTH OF PENNSYLVANIA
3 CRIMINAL DIVISION
4

5 IN RE:)
6 BRENDA DAVIS,) MD-898-2021
7 CLERK OF COURTS)

8 - - -

9 TRANSCRIPT OF HEARING
10 BEFORE THE HONORABLE JOHN F. DiSALLE,
11 PRESIDENT JUDGE
12 COURTROOM NO. 2
13 THURSDAY, AUGUST 4, 2022

14 - - -

15 PDF COPY

16 APPEARANCES:

17 James DePasquale, Esquire
18 Charles C. Gallo, Esquire
19 Robert C. Gallo, Esquire
20 Representing Brenda Davis
21 Clerk of Courts

22 Transcribed by:
23 Christine B. Mumper
24 Official Court Reporter

25 Transcript filed in the Clerk of Courts, this ___
day of August, 2022.

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I-N-D-E-X

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COURT'S EXHIBITS:

PAGE:

- A - Waiver of Functions filed by
COC Brenda Davis dated 9-2-21 5
- B - Amended Waiver of Functions filed
by COC Brenda Davis dated 9-29-21 6
- C - First Administrative Order of
President Judge DiSalle dated
10-15-21 7
- D - Second Administrative Order of
President Judge DiSalle, ordering
transfer of files dated 10-15-21 7
- E - Letter from President Judge DiSalle
to COC Brenda Davis dated 10-15-21 8
- F - E-mail from CA Patrick Grimm to
COC Brenda Davis dated 10-15-21 8
- G - E-mail from JPO Director Amanda
Gallagher to COC Brenda Davis
dated 10-28-21 8
- H - E-mail from JPO Director Amanda
Gallagher to COC Brenda Davis
dated 11-5-21 8
- I - Withdrawal of Waivers of Functions
dated 11-5-21 8
- J - E-mail from CA Patrick Grimm to
COC Brenda Davis dated 11-19-21 9
- K - Administrative Order of 11-23-21 10
- L - Transcript of hearing 11-24-21 10
- M - Courthouse security videos 11-24-21 10

- - -

1 P-R-O-C-E-E-D-I-N-G-S

2 (Thereupon, the proceedings commenced
3 at 10:03 a.m.)

4 - - -

5 THE COURT: Before we begin, I want to
6 remind everybody of my decorum order that was
7 part of the scheduling order. There's a sign
8 on the front of the courtroom that all cell
9 phones must be off, must be put away. If
10 they are seen in view, they will be
11 confiscated, and a possible fine levied.

12 Furthermore, there will be no calling
13 out from the audience, no outbursts, no other
14 misbehavior. This is a courtroom. This is
15 different from the Commissioners' public
16 meeting and other public events. This is a
17 courtroom. I expect everyone to behave in an
18 appropriate manner.

19 This is the time for the rescheduled
20 contempt proceeding in the matter of
21 In Re: Brenda Davis. Ms. Davis, you are here
22 with your attorneys. Counsel, would you
23 please put your appearance on the record.

24 MR. DePASQUALE: James DePasquale for
25 Brenda Davis.

1 MR. C. GALLO: Charles C. Gallo for
2 Brenda Davis. Also, Robert C. Gallo for
3 Brenda Davis.

4 THE COURT: Thank you. Ms. Davis, you
5 were charged and brought here for Contempt of
6 the Court's Order of November 23rd, where the
7 Court ordered the peaceful transfer of the
8 Washington County Juvenile files from your
9 office, to the Office of Juvenile Probation.
10 You are charged with Contempt, pursuant to
11 Title 42, Section 4132. And you come under
12 three of those categories.

13 One, you're charged with official
14 misconduct as an officer of the Court.

15 Number two, you are charged with
16 disobedience by an officer of the Court to
17 the lawful process of the Court.

18 And 3, misbehavior of any person in
19 the presence of the Court, thereby
20 obstructing the administration of justice.

21 I would like to begin with the time
22 line of the events leading up to the Order of
23 November 23, 2021. These events, all began
24 with the -- were all precipitated by the
25 Notice of Waiver of Functions filed by

1 Brenda Davis on November 2, 2021, which
2 included the juvenile functions, and CPCMS
3 functions regarding juvenile files.

4 Thereafter, a meeting was held with
5 myself, the Court Administrator,
6 Brenda Davis, and her then Solicitor,
7 regarding this Waiver of Functions, and
8 attempt to -- this Unilateral Waiver of
9 Functions, in an attempt to resolve how these
10 duties would be handled thereafter.

11 During that meeting, the Solicitor
12 told you that this was an invalid Waiver of
13 Functions, because it was not done with the
14 consent of the Court. You also received
15 notice -- which by the way, in your
16 September 2, 2021, Waiver of Functions, you
17 signed it By the Court, Brenda Davis, Clerk
18 of Courts, 9-2-2021. That will be Exhibit A.

19 (Thereupon, Court's Exhibit A was
20 marked for identification and admitted into
21 evidence.)

22 THE COURT: Your Solicitor told you
23 this was an invalid waiver. The AOPC told
24 you it was an invalid waiver. Yet the
25 meeting broke down, and you vowed to file an

1 Amended Waiver, which you did on
2 September 29, 2021. And again, that Amended
3 waiver did not change anything with regard to
4 the juvenile files. That is Exhibit B.

5 (Thereupon, Court's Exhibit B was
6 marked for identification and admitted into
7 evidence.)

8 THE COURT: After that break-down of
9 the meeting on October 6th, the Court
10 Administrator and the Court gave notice to
11 the Statewide Juvenile Rules Committee of
12 proposed amendments to the local rules, in
13 order to facilitate the filing of juvenile
14 files.

15 On October 7th, approval was received
16 from the Statewide Rules Committee, approving
17 the proposed amendments to the local rules in
18 Washington County, as regarding juvenile
19 files, and the transfer of juvenile files.

20 By Order dated October 15, 2021, which
21 is Exhibit C, the Court ordered the transfer
22 of files -- the Court adopted amendments to
23 the Local Rules of Juvenile Procedure, L-120
24 and 1120, that from 30 days thereafter, the
25 juvenile files would be maintained in the

1 Juvenile Probation Office.

2 (Thereupon, Court's Exhibit C was
3 marked for identification and admitted into
4 evidence.)

5 THE COURT: On October 15, 2021, I
6 issued a second Administrative Order ordering
7 the transfer of those files, and that they
8 would be kept in the Juvenile Probation
9 Office.

10 That is Exhibit D.

11 (Thereupon, Court's Exhibit D was
12 marked for identification and admitted into
13 evidence.)

14 THE COURT: I sent a letter to
15 Brenda Davis, as the Clerk of Courts, dated
16 October 15, 2021, Exhibit E, informing her of
17 the two orders, and the change of procedure
18 in the handling of the Juvenile Probation
19 files.

20 On October 15th, the District Court
21 Administrator, Patrick Grimm, sent an e-mail
22 to Brenda Davis attaching the two
23 Administrative Orders, and the letter from
24 the Court.

25 That is Exhibit F.

1 (Thereupon, Court's Exhibits E and F
2 were marked for identification and admitted
3 into evidence.)

4 THE COURT: On October 28th, the Chief
5 of Juvenile Probation, Amanda Gallagher, sent
6 Brenda Davis an e-mail, reaching out to meet
7 and discuss the transfer of the juvenile
8 files. That is Exhibit G.

9 (Thereupon, Court's Exhibit G was
10 marked for identification and admitted into
11 evidence.)

12 THE COURT: On November 5, 2021, Chief
13 of Juvenile Probation, Amanda Gallagher, sent
14 another e-mail to Brenda Davis, Clerk of
15 Courts, asking to meet to discuss the
16 transfer of files.

17 (Thereupon, Court's Exhibit H was
18 marked for identification and admitted into
19 evidence.)

20 THE COURT: Also, on November 5th,
21 Ms. Davis filed a Withdrawal of All Previous
22 Waivers of Function. That is Exhibit I.

23 (Thereupon, Court's Exhibit I was
24 marked for identification and admitted into
25 evidence.)

1 THE COURT: Also, on November 5th,
2 Ms. Davis filed four pro se appeals to the
3 Commonwealth Court of Pennsylvania.

4 And on November 19th, District Court
5 Administrator Patrick Grimm, sent Ms. Davis
6 another e-mail regarding the transition of
7 the juvenile files from Clerk of Courts to
8 the Juvenile Probation Office, to which
9 Ms. Davis responded, any attempts to remove
10 files will be met with opposition. And,
11 "Until I receive an order from the
12 Commonwealth Court nothing is being removed
13 from the Clerk of Courts office." That would
14 be Exhibit J.

15 (Thereupon, Court's Exhibit J was
16 marked for identification and admitted into
17 evidence.)

18 THE COURT: The Court then issued its
19 Order of November 23, 2021, Exhibit K,
20 ordering that the files would be transferred
21 on the 24th, and that the Clerk of Courts and
22 her staff were directed to comply. And in
23 the event they refused to comply and
24 cooperate, that the Sheriff would enforce the
25 Order.

1 (Thereupon, Court's Exhibit K was
2 marked for identification and admitted into
3 evidence.)

4 THE COURT: And Mr. DePasquale and
5 Mr. Gallo, here is a copy of all the exhibits
6 for you.

7 I'm also making part of this record
8 the transcript of the testimony that was
9 taken in open court on November 24th.

10 On November 24th, obviously, Ms. Davis
11 refused to comply with the Order, locked the
12 vault door. The files happened to be
13 contained in the vault in the Clerk of
14 Court's office, and when presented with the
15 order, she slammed the door shut, and locked
16 the door, spun the dial so that it could not
17 be accessed.

18 She refused to come to my courtroom
19 when brought up here by the Deputies. I was
20 waiting in court for this purpose. I could
21 hear her screaming outside my doorway. She
22 never did come into the courtroom.

23 (Thereupon, Court's Exhibit L was
24 marked for identification and admitted into
25 evidence.)

1 THE COURT: I would also like to make
2 part of the record the video of what
3 transpired in the elevator and in the
4 hallway. And we're going to play that on the
5 record right now.

6 (Thereupon, Court's Exhibit M was
7 marked for identification and admitted into
8 evidence.)

9 (Video played)

10 MS. LEGLER: Which one did you want to
11 see first?

12 THE COURT: The elevator.

13 So this is the security camera from
14 the courthouse elevator. This is, obviously,
15 Ms. Davis, looking at my order while in the
16 elevator. I will note for the record that
17 any third-party's identities have been
18 blurred in this video to protect their
19 privacy.

20 (Video played)

21 THE COURT: I will note for the record
22 that after refusing to come in the courtroom,
23 Ms. Davis now has her hat and coat on. She's
24 also accompanied by our Prothonotary and our
25 Deputy Prothonotary in the elevator, with the

1 Sheriff's deputies.

2 (Video played)

3 THE COURT: All right. The next
4 portion of this video is what transpired in
5 the basement floor of the courthouse, in the
6 breezeway.

7 We don't have any video of the locking
8 of the vault door, because Ms. Davis removed
9 the camera from her office on October 18,
10 2021.

11 (Video played)

12 THE COURT: Other than the Deputies, I
13 don't want anyone going in and out of the
14 doorway. If you are in here now, you're
15 going to have to stay here; and thereafter,
16 you're not permitted back in.

17 (Video played)

18 THE COURT: That ends the video, which
19 we will make a part of this record.

20 The elements of contempt are that the
21 Defendant committed misconduct, clearly
22 refused to comply with my Order; that she did
23 so in the presence of the Court. The mere
24 fact that she refused to come into my
25 courtroom, by itself, is an act of contempt

1 in the presence of the Court.

2 I could hear her screaming out, along
3 with her associates, out in the hallway,
4 while I was waiting to address her for this
5 contempt.

6 Number three, with the intent to
7 obstruct the proceedings, which was the
8 transfer of the files, which she did
9 obstruct.

10 And finally, that the conduct actually
11 obstructed the administration of justice.

12 Does the Defendant understand the
13 nature of the contempt charges against her?

14 MR. DePASQUALE: We understand the
15 nature of the charge, yes.

16 THE COURT: Does the Defendant wish to
17 address any defense to her contempt?

18 MR. DePASQUALE: Your Honor, I
19 understand your position that --

20 THE COURT: Can you move the
21 microphone closer to you, so I can hear?

22 MR. DePASQUALE: I understand your
23 position that you were in the courtroom and
24 heard things outside; and also, that the
25 Clerk of Courts refused to enter the

1 courtroom.

2 However, I don't believe that
3 constitutes Direct Contempt, Direct Criminal
4 Contempt, any time I've ever heard of it or
5 read of it, is something that actually occurs
6 in the presence of the judge.

7 We're not arguing about the contempt,
8 because there was an order, and the order was
9 not complied with. But the order was
10 complied with, within a few hours. So we're
11 talking about a few hours that this thing was
12 out of kilter.

13 I understand the Court's position.
14 But I do not believe that there is Direct
15 Criminal Contempt here. That is number one.

16 Number two, the Juvenile Rule, the
17 local rule, which gave rise to the Order of
18 Court that the Clerk of Courts is being held
19 in contempt of, was an order that was, as I
20 understand it, a rule rather than that was first
21 published in the Pennsylvania Bulletin on
22 October 30th.

23 It had to be 30 days from the date
24 that it was first published, before it became
25 a rule -- I'm sorry, not October -- yes,

1 October 30th. And it would not have become a
2 Rule until November 29th. So we
3 understand --

4 THE COURT: So your position is that
5 until November 29th, she had no obligation to
6 follow the Court's Order?

7 MR. DePASQUALE: Your Honor, there was
8 an Order from the Court, and that order
9 should have been complied with. We're not
10 arguing about that.

11 But what I'm saying is that the Rule
12 that gave rise to the Order, even without the
13 Rule, if the Court orders that somebody does
14 something, that order has to be complied
15 with. It can later be contested on appeal,
16 et cetera.

17 But incidentally, there was an appeal
18 filed here. And I think that the Clerk of
19 Courts was under the impression that there
20 was supersedeas which she filed to the
21 Commonwealth Court.

22 But be that as it all may, if you
23 distill it out, nothing occurred in the
24 courtroom, directly in the presence of
25 your Honor. That's number one.

1 And number two, what did happen was
2 purged within about three hours, as I
3 understand it.

4 THE COURT: And the contempt finally
5 ended on June 23rd, when the Supreme Court of
6 Pennsylvania said now you can proceed.

7 Now, the Court dismissed the challenge
8 to the Court's authority, so how it did not
9 end three hours later.

10 Let me back up, number one, the
11 Court's Administrative Order of October 15,
12 2021, and as you acknowledged,
13 Mr. DePasquale, the Court's Order should be
14 followed, regardless of when the effective
15 date of the rule change is.

16 But in that Order, I expressly state,
17 "Accordingly, the transition of duties may
18 occur earlier than the effective date of
19 Rules L-120, and L-1120, as determined by the
20 Court. The Clerk of Courts shall not cease
21 to carry out any duties, or otherwise make
22 changes without permission of the Court."

23 That is number one.

24 Number two, yes, Ms. Davis filed four
25 pro se appeals. There's no supersedeas

1 there. There's nothing in the correspondence
2 that says, I'm relying on a supersedeas. If
3 she believed that, wouldn't a reasonable
4 person have entered my courtroom and said,
5 Judge, I thought it was stayed. Let's get
6 Mr. DePasquale on the phone, and he'll
7 explain it to you.

8 MR. DePASQUALE: Well, she couldn't --

9 THE COURT: Or would you have advised
10 her, Don't go in there under any
11 circumstances, because the supersedeas
12 prevents you from having to comply with the
13 Court's Order?

14 MR. DePASQUALE: Well, your Honor,
15 you're asking me a hypothetical question,
16 because I never had any contact with
17 Ms. Davis while all that was going on, and
18 had nothing -- I did not become involved in
19 this until December.

20 But if you are asking me, had I been
21 told there was a Court Order, what I would
22 have instructed any client was to comply with
23 the Court Order, and we'll worry about the
24 validity of that at a later date.

25 But I wasn't involved in this as it

1 was occurring. None of attorneys here were
2 involved with it.

3 All I'm saying is this: There's a
4 Court Order. I agree that the Court Order
5 should be complied with.

6 THE COURT: Glad you agree.

7 MR. DePASQUALE: But -- and I wasn't
8 following what you were referencing in June.
9 I mean, it's my understanding of this that
10 she was to turn over records, and within
11 three hours of Mr. Grimm going to her office,
12 those records, in fact, were turned over by
13 the -- they were in the vault, and they were
14 turned over by the Deputy.

15 THE COURT: By the Deputy.

16 MR. DePASQUALE: Yes.

17 THE COURT: So Ms. Davis did not purge
18 her contempt. The Deputy was brought into my
19 courtroom, who came in without incident, and
20 agreed that she would open the vault door so
21 the transfer could take place.

22 So Ms. Davis did nothing to alleviate
23 her contempt. In fact, rather, she absconded
24 from the building, from which flight, I can
25 infer that she had consciousness of her guilt

1 of Contempt of Court.

2 MR. DePASQUALE: Well, your Honor, she
3 absconded from the building to go to the
4 hospital. I don't believe that that
5 indicates consciousness of Contempt. I mean,
6 she went to the hospital, and the Deputy
7 works directly for the Clerk of Courts.
8 She's the agent of the Clerk of Courts. If
9 the Deputy does something, it is on behalf of
10 the Clerk of Courts.

11 THE COURT: That's an argument of
12 fact.

13 MR. DePASQUALE: And once this was
14 complied with, the compliance has remained in
15 effect since that moment.

16 THE COURT: I also want to address
17 your argument that it didn't appear -- that
18 the contempt was not committed in the
19 presence of the Court.

20 As we know, even though you cited it
21 differently in your Petition for Writ of
22 Prohibition, Commonwealth versus Moody, the
23 Supreme Court said that, "the requirement in
24 the presence of the Court is not a strict
25 requirement."

1 The Court quotes Commonwealth versus
2 other cases, including Commonwealth versus
3 Ferraro, where the Court found that the
4 failure to appear in court is an act
5 committed in open court, where the Court is
6 convened and declared open for the
7 transaction of its proper judicial business.

8 The Court was open. I was waiting for
9 Ms. Davis to come in, to address her. We
10 could have addressed the contempt and avoided
11 all this, but instead, she refused to come
12 in, created this commotion over three floors
13 of the courthouse, and absconded from the
14 building.

15 Secondly, the disturbance outside my
16 courtroom is considered in my presence and
17 obstructs the Court's business.

18 And it did obstruct the business of
19 the Court, and up until today, it continues
20 to. After that day, we didn't say, fine,
21 there was never any acknowledgment that the
22 order is done, the files are transferred.

23 No, we had to go through the
24 Commonwealth Court, which the appeals were
25 dismissed. And then you filed a Writ of

1 Prohibition, which on June 23, 2021, the
2 Supreme Court dismissed.

3 And in that Writ of Prohibition,
4 despite what was said to the newspaper, it
5 was a direct challenge to every
6 Administrative Order the Court had ever
7 entered.

8 MR. DePASQUALE: But your Honor,
9 certainly, the Clerk of Courts cannot be held
10 in Contempt for appealing to a higher court,
11 within the due process of law. I mean --

12 THE COURT: These aren't appeals of
13 right, they're discretionary appeals.

14 MR. DePASQUALE: I understand that,
15 but what was done --

16 THE COURT: I'm not saying that --
17 that's not what obstructed the system.
18 That's just -- that's not -- I don't see how
19 you can argue that in three hours, it was all
20 done, when we're still doing it today.

21 We've spent countless -- the Court and
22 others have spent countless hours on this,
23 countless days.

24 Is there anything else that you wish
25 to present on behalf of Ms. Davis, regarding

1 her contempt?

2 MR. DePASQUALE: Could you give us
3 30 seconds, your Honor.

4 THE COURT: You need time to discuss
5 it? I issued this order on July 1st to
6 schedule this hearing.

7 MR. C. GALLO: I understand.

8 MR. DePASQUALE: Please, if you'd let
9 us have 30 seconds.

10 THE COURT: Go ahead.

11 (Counsel confers with Ms. Davis.)

12 MR. DePASQUALE: Your Honor, we would
13 like to have Brenda Davis address the Court.
14 Stand up.

15 You need to apologize to the Court.

16 THE COURT: Mr. DePasquale, I will
17 also point out that the official, Ms. Davis
18 is the Clerk of Courts. She's an officer of
19 the Court.

20 Her misconduct to the Court does not
21 necessarily have to be in the presence of the
22 Court under Section 4132 of the Judicial
23 Code.

24 Nevertheless, as stated in
25 Commonwealth versus Moody, the Pennsylvania

1 Courts have departed from the "observed by"
2 or "in front of" requirement for summary
3 hearings of Contempt of Court.

4 Nevertheless, as I said, clearly,
5 refusing to come into the courtroom is an act
6 of contempt in the presence of the Court, as
7 is the display and behavior right outside the
8 doorway of the courtroom.

9 MR. DePASQUALE: Your Honor, Ms. Davis
10 would like to address the Court.

11 THE COURT: Well, let's have her be
12 sworn in, then.

13 (Ms. Davis was duly sworn.)

14 THE COURT: You can sit down.

15 MR. DePASQUALE: Just apologize.

16 MS. DAVIS: Okay.

17 Your Honor, I would like to apologize
18 for any actions that may have construed that
19 I wasn't complying with your Order. I wasn't
20 expecting to be assaulted on two separate
21 occasions --

22 THE COURT: Mr. DePasquale is
23 cautioning you on that.

24 MS. DAVIS: I apologize for --

25 THE COURT: You filed charges against

1 all of the -- you attempted to file charges
2 against all of the Deputy Sheriffs, who
3 clearly are not assaulting you.

4 The Attorney General's office has
5 investigated it, and found that nothing
6 occurred that would warrant any further
7 investigation.

8 Anything else?

9 MS. DAVIS: Yes. I would like to
10 apologize to the Court, and to yourself. I
11 have been following your Court Orders, every
12 single one of them, that you have issued.
13 And I will continue to follow your Court
14 Orders, and any future orders that may be
15 issued.

16 I have hired a legal team here,
17 because the office does not have an office
18 Solicitor. I'm unable to find a Solicitor
19 that's willing to represent the office, based
20 on the contractual agreement that is
21 provided. So I didn't have a lawyer to
22 consult with that day.

23 And I wanted to at least have the
24 Deputy there, because I only had two
25 employees in the office, so we could take an

1 inventory of the records, to make sure that
2 what we were going to give them, where
3 everything was going to be accounted for.

4 So I really wanted to take some time
5 to read the Order, and to consult with my
6 personal lawyer. And at that point,
7 everybody was supposed to get the records on
8 November 30th, as well as the personnel that
9 was being taken from the office. So I had
10 all intentions on finishing the inventory up,
11 and opening the door on the 30th, for them to
12 come in and take whatever they needed to
13 take.

14 I was completely taken by shock and
15 surprise to see the deputies and the Court
16 coming into my office. So I apologize if you
17 note I was causing a disturbance. I just
18 wanted to thoroughly read the Order over, and
19 get a legal consult before I was put in
20 handcuffs.

21 THE COURT: Why didn't you come into
22 my courtroom on November 24th and tell me
23 that?

24 MS. DAVIS: I did walk into your
25 courtroom, and Deputy Schell opened the door

1 for me. And I have a video proving that I
2 walked into the courtroom, and there was
3 nobody in the courtroom.

4 And then the Deputy Sheriffs told us
5 to have a seat on the bench outside the door,
6 which we did, and that is when Judge McDonald
7 came out and wanted to know why all the
8 Sheriff's Deputies were here.

9 THE COURT: Well, you weren't in the
10 courtroom when the Court was in the
11 courtroom.

12 MS. DAVIS: I walked -- they brought
13 me to the courtroom.

14 THE COURT: So if you were here before
15 I got in the courtroom, that doesn't purge
16 your contempt, number one.

17 Number two, did you not author an
18 e-mail to Mr. Grimm saying, Any attempt to
19 remove files will be met be resistance?

20 Answer the question. And that, I will
21 not allow any files to be removed without an
22 Order of the Commonwealth Court?

23 MS. DAVIS: May I respond?

24 THE COURT: Yes.

25 MS. DAVIS: I told him that we were on

1 appeal, and I was under the assumption that
2 it was an automatic stay when you file an
3 appeal. And that nothing would have occurred
4 until the higher court determined the outcome
5 of those cases.

6 When I read the law, the law was clear
7 that the juveniles, I'm the official
8 record keeper, and I -- I needed to make sure
9 that what was happening was not going to
10 affect the rest of the Clerks of Courts
11 across the state, too.

12 Because no other Clerk of Courts --
13 they all are in charge of the records of the
14 juvenile department. So I wanted to get a
15 higher legal opinion to make sure that it
16 wasn't going to affect anything.

17 THE COURT: Mr. Grimm, who is the
18 District Court Administrator and an attorney
19 informed you that there was no stay. But you
20 read it, and assumed there was a stay. But
21 you just said you were ready to make the
22 transfer --

23 MS. DAVIS: I was still going to go
24 forward --

25 THE COURT: I'm talking.

1 MS. DAVIS: I'm sorry.

2 MR. DePASQUALE: All right, Brenda --

3 THE COURT: You just said you were
4 ready to make the transfer on November 30th.
5 So you just contradicted yourself.

6 MS. DAVIS: Huh-uh.

7 THE COURT: And why did you wait nine-
8 and-a-half months -- over nine months to
9 apologize?

10 MS. DAVIS: May I answer now?

11 THE COURT: Yes.

12 MS. DAVIS: We had to go through the
13 processes of the Commonwealth Court, and then
14 the Supreme Court. And I've never had the
15 opportunity to have a meeting with you, and
16 to discuss this, or even Mr. Grimm, even when
17 I begged for meetings last year. I was
18 refused to sit down and discuss the meetings.
19 We only had one, and that was the day that
20 you mentioned, where I had a brief couple of
21 months, where I did have a Solicitor for the
22 office.

23 And he's the one who advised me that I
24 needed to file the Waiver, which the Waiver
25 only waived the money of the Clerk of Courts

1 office. It didn't waive any statutory
2 duties.

3 THE COURT: Well, the record speaks
4 for itself, the exhibits that I've entered.

5 Your waiver was filed before we met
6 with Mr. Grimm and I, and Mr. Makel met with
7 you in my office. You had already filed the
8 Waiver. Mr. Makel told you it was invalid.
9 The Deputy Court Administrator of
10 Pennsylvania, the AOPC, informed you that it
11 was an invalid waiver.

12 And you told me that the AOPC was in
13 cahoots with me, and that you were going to
14 file an Amended Waiver. And we tried to get
15 a Consent Order drafted to delineate who
16 would be responsible for what. And that
17 broke down, and you vowed you would file an
18 Amended Waiver. You did. Those documents
19 speak for themselves.

20 Ms. Gallagher reached out to you at
21 least twice, to try to arrange a meeting to
22 discuss transfer of the files. There was a
23 discussion of the inventory that would be
24 done.

25 So you're being disingenuous when you

1 say you were just worried about protecting
2 the files. And of course, slamming the vault
3 door shut was your way of protecting your
4 files, and protecting your office. That was
5 ridiculous.

6 Is there anything else?

7 MS. DAVIS: Yes, your Honor, also
8 contained inside that vault is money, is
9 sealed search warrants, there's not just
10 juvenile files.

11 THE COURT: All right. So you were
12 protecting the cash in the vault?

13 MS. DAVIS: I was protecting all the
14 secured documents that were in the vault. I
15 didn't know who was there. Nobody had
16 nametags on, no Sheriff Deputies had their
17 nametags on. They all had masks on. I
18 didn't even know who they were. I had to ask
19 them their names. They came in without
20 nametags.

21 THE COURT: Well, if you had not
22 removed the camera from your office, on
23 October 18th, claiming to have delivered it
24 to the FBI, later admitting you still had
25 possession of it until it was confiscated by

1 the Washington City Police, we would have a
2 review of that, as well.

3 But that --

4 MS. DAVIS: May I respond?

5 THE COURT: No. We're getting off
6 track here.

7 MR. DePASQUALE: Just calm yourself.

8 THE COURT: When your deputy came up,
9 and I ordered her to open the vault, there
10 was no discussion about how -- what if
11 someone breaks in and takes the other secured
12 documents or cash.

13 Is there anything else to present,
14 Mr. DePasquale?

15 MR. DePASQUALE: No, your Honor, I
16 have -- I mean, the facts are the facts.

17 I will say, and I've said before, and
18 I don't want to belabor this, that I don't
19 see how the Clerk of Courts can be held
20 responsible for what happened afterwards, in
21 terms of lawyers filing things with Appellate
22 Courts.

23 But clearly, there was an Order, the
24 Order was not complied with.

25 THE COURT: Well, she is responsible

1 for what happens afterwards, because she set
2 that in motion.

3 Those are not appeals of right, you
4 can't say you're exercising your
5 Constitutional right. She hired the three of
6 you to challenge the Court's authority to
7 issue any order, let alone this order.

8 You attached every order that I had
9 done since 2021, virtually every order, to
10 the reproduced record to the Supreme Court.

11 MR. DePASQUALE: All of that is true,
12 your Honor, but again, I am flabbergasted
13 that that can be held as evidence of
14 contempt.

15 THE COURT: I'm not holding -- that's
16 not part of the contempt. That didn't --
17 when you say nothing happened, it was all
18 over in three hours. No, it isn't. Here we
19 are over nine months later. It could have
20 ended in those hours, but it didn't.

21 Anything else? Mr. Gallo, did you
22 have something else to say?

23 MR. C. GALLO: Your Honor, only that
24 Ms. Davis, at least once she started
25 counseling with our current legal team, I

1 know I feel responsible for looking in the
2 Pennsylvania Constitution, and telling
3 Brenda, Brenda, according to the Pennsylvania
4 Constitution, you are the custodian of the
5 records. So based upon that part of the
6 Pennsylvania Constitution, I did think that
7 we had a legitimate, good-faith legal
8 argument.

9 Once the Supreme Court ruled, I told
10 Brenda, I said, "This issue is dead." I
11 said, "You are obviously an elected
12 subordinate of President Judge DiSalle. He's
13 the CEO of all judicial business, and we are
14 not in a position to question any of his
15 Orders. All we can do is fulfill all of his
16 Orders until our term of office is over.
17 That is what you swore an oath to. You owe
18 it to the constituents of Washington County,
19 as well as the Court system."

20 And Brenda says, "I understand."

21 Once the Supreme Court shot us down, I
22 said, "There's nowhere else to go." I said,
23 "This was decided. Based on the Pennsylvania
24 Constitution, I thought they would protect
25 you, at least in housing the records."

1 I thought this was shrinking her job,
2 because, and thought that she at least had
3 some Constitutional legal protection as the
4 gatekeeper of the records.

5 That is why we took it to the Supreme
6 Court. Once they denied our Petition, that
7 is moot. It is clear to Brenda that we have
8 no discretion in any Court business. All we
9 do is do what the President Judge tells us
10 to, here forward.

11 And that is where we are, your Honor.
12 And that's what she believes as she sits here
13 today. Anything you tell her to do, she's
14 going to do.

15 THE COURT: How did Allegheny County
16 Constitutionally eliminate its Clerk of
17 Courts, if you thought you had a clear,
18 Constitutional shot at it.

19 MR. C. GALLO: Through the Home Rule
20 Charter, your Honor.

21 THE COURT: How can that be
22 Constitutional, if this Clerk of Courts has
23 power over and above the President Judge and
24 the Court?

25 MR. C. GALLO: I think once Allegheny

1 County -- once we -- we put it to the
2 electorate and the majority of the electorate
3 came back and said, Yes, we'd rather have a
4 CEO of the County and his functionaries,
5 rather than the three-commissioner system.
6 Our electorate made that choice ten years ago
7 or so. And we've been running under that
8 system --

9 THE COURT: So that's the only --
10 that's the only time the Court can direct an
11 officer of the Court to do something? If the
12 electorate does it, allows it?

13 MR. C. GALLO: No. Where we stand
14 right now, in this County, the President
15 Judge is the boss. You determine all
16 judicial business in this courthouse. That
17 is unquestioned now. It was questioned
18 before and unquestioned now.

19 THE COURT: I didn't see that anywhere
20 in your Petition.

21 MR. C. GALLO: I'm sorry?

22 THE COURT: I didn't see that anywhere
23 in your Petition for Writ of Prohibition,
24 that statement.

25 MR. C. GALLO: Well, once we lost,

1 that was my statement. That's in the
2 Washington Observer, your Honor. I believe
3 that statement was after the decision.

4 THE COURT: Well, you said you never
5 challenged the authority of the Court. Yes --
6 nevertheless, we're moving on.

7 Is there anything you wish to put on
8 the record?

9 MR. C. GALLO: No, thank you, your
10 Honor.

11 THE COURT: The Court does find that
12 these -- that Ms. Davis, being an officer of
13 the Court, committed misconduct, that being
14 refusing to follow the Court's order, locking
15 the vault, refusing to submit to the
16 deputies, refusing to come into the courtroom
17 to be addressed by the Court, that -- because
18 of her refusal to come into the courtroom,
19 her misbehavior outside the courtroom, is in
20 the presence of the Court, that she certainly
21 did so with the intent to obstruct the
22 proceedings, and that the conduct actually
23 did obstruct the administration of justice.

24 I spent a half a day dealing with this
25 that should have been done in 10 minutes.

1 Moving on to the sentencing
2 considerations, Ms. Davis, you could have
3 walked into my courtroom that day with the
4 dignity of an elected official and explained
5 what you're supposedly -- what you're trying
6 to explain to me now, even though your logic
7 is flawed.

8 Instead, you engaged in the most
9 undignified display of behavior I've ever
10 witnessed in all my years in my career.

11 I've been involved in this courthouse
12 since 1988. I was an assistant DA for eight
13 years. I've been a judge for 17 years. I
14 preside over Mental Health Court and other
15 criminal court. I've never seen anything so
16 offensive.

17 In seven years as a Mental Health
18 Court judge, I've had a couple participants
19 who had a meltdown in my courtroom that came
20 close to your performance. But we were able
21 to get them under control within a few
22 minutes. And those are folks with serious
23 mental health issues.

24 You carried on for nearly half-a-day,
25 over three floors of the courthouse. How

1 many deputies were involved? How many EMT's
2 were involved? Again, the fact that -- as
3 I've already stated, the fact that you
4 refused to come in the courtroom, that you
5 resisted the deputies and fled the building
6 can be considered evidence of your
7 consciousness of guilt that you were in
8 contempt.

9 Again, you weren't fleeing to get to
10 the hospital. You may have gone to the
11 hospital, but you had -- we had -- there were
12 EMT's there to treat you.

13 You are an elected official, yes. And
14 you should be held to a higher standard. And
15 again, your refusal to follow the Court's
16 Order is contemptuous, whether it's in Court
17 or out of Court.

18 And it did not end -- it did not end
19 until after -- your contempt did not end
20 until after the files were secured and
21 transferred.

22 As I stated, it was your deputy who
23 had to secure the transfer -- open the vault
24 and make sure to facilitate the peaceful
25 transfer of the files.

1 Again, we've been dealing with the
2 appeals to the Appellate Court. These are
3 not appeals of right, they were deemed
4 frivolous appeals. Those appeals wasted much
5 of my time, Court Administration's time, AOPC
6 legal staff, and you continue to challenge
7 the Court's authority.

8 Barely a day goes by that I don't have
9 to spend a minimum of one hour, and sometimes
10 all day, on an issue created by Brenda Davis
11 as the Clerk of Courts. You continue to be
12 obstinate and interfere with the
13 administration of justice.

14 The most recent thing is challenging
15 sealed warrants and other sealed orders. I
16 had to issue an Order directing you to accept
17 a sealed order, and other orders, and
18 directing you to refrain from attempting to
19 review the sealed file, and refrain from
20 disseminating any information in the sealed
21 files.

22 One day, you decided you were not
23 going to accept Pretrial Service orders
24 because of an OTN number, even though you had
25 accepted one earlier that day.

1 The DA's office has to send county
2 detectives with their staff, to make sure the
3 filings go off without a hitch. Matters that
4 used to be routine have now become an ordeal
5 in our courthouse.

6 And furthermore, as I said, you're
7 accusing the Deputies of assaulting you.
8 Everyone has seen the video. You accused the
9 JPO staff, and her entire department of
10 malfeasance. You rant about this at public
11 Commissioners meetings. And the Attorney
12 General's office has investigated all of your
13 allegations and is not moving forward with
14 anything.

15 The Court further finds that a civil
16 remedy is not appropriate in this case, and I
17 am moving on to pronounce sentence. Is there
18 anything that you would like to say before I
19 sentence you?

20 MS. DAVIS: Your Honor, I'm sorry, and
21 I am going to follow every Administrative
22 Order for the remainder of my term in office.

23 MR. DePASQUALE: And you will not
24 cause any issues, just --

25 MS. DAVIS: And I am not going to

1 cause any issue.

2 THE COURT: Well, I appreciate that.
3 And I'm willing to accept your apology. But
4 I'm afraid it's too little too late.

5 And if I were to sentence you
6 commensurate with the number of days I've
7 spent dealing with your contempt, which any
8 time that I spend almost invariably involves
9 another party, including Court Administration
10 staff, my fellow judges, the Commissioners
11 the DA's office, the Sheriff's office, Adult
12 Probation, Juvenile Probation, other
13 attorneys, AOPC legal staff. If I added all
14 those days up, and made your sentence
15 commensurate to that, it would be a lot more.

16 The time and the resources that have
17 been spent dealing with this contempt are
18 above and beyond, all involving a simple
19 transfer of files from one office to the
20 other, and all to protect your ego.

21 And your staff had already -- you were
22 aware in October that the staff was already
23 being removed. So you're -- there's no
24 question that you knew this was coming. Not
25 to mention all the time and effort that has

1 been spent in the Appellate Courts.

2 So based on the Court's finding of
3 your Direct Criminal Contempt, the Court
4 sentences you to pay the costs of
5 prosecution, pay a fine of \$5,000. And in
6 assessing your ability to pay this non --
7 mandatory fine, I take into account your
8 salary, which is a matter of public record.
9 You make over \$90,000 a year. I don't
10 believe you have any children to support.
11 You reputedly live in the home of your
12 boyfriend, Mr. D'Alessandro, our former Chief
13 Deputy Sheriff, whose former colleagues you
14 have nothing but contempt for, show contempt
15 for.

16 And you obviously have the funds to
17 hire three private attorneys to prosecute
18 these discretionary appeals, so I'm satisfied
19 that you have the ability to pay that fine.

20 So you'll pay the costs of
21 prosecution, a fine of \$5,000, and be
22 sentenced to the Washington County
23 Correctional Facility for no less than
24 15 days, to no more than six months.

25 On completion of your minimum, you

1 will be paroled to the supervision of the
2 Washington County Adult Probation Office.

3 You must comply with all terms and
4 conditions of the Washington County Adult
5 Probation Office, including your reporting
6 requirements and the approval of your
7 residence. When you're on probation, you
8 must submit to warrantless searches of your
9 residence, vehicle, property, cell phone, and
10 other electronic devices.

11 You may not have access to firearms
12 while you're on probation.

13 You must report to the Probation
14 Office within 24 hours, or the next business
15 day after being released from the
16 Correctional Facility.

17 You may only reside at the approved
18 residence, approved by the Probation Office,
19 and shall not reside or move without their
20 approval.

21 You may not travel outside the
22 Commonwealth without a travel permit from the
23 Probation Office.

24 You shall notify the Probation Office
25 of any change in your employment, and be

1 subject to verification.

2 You must abide by any curfew proposed
3 by the office, or by the Court. You may not
4 purchase, possess or use alcoholic beverages,
5 or frequent bars or taverns.

6 You may not possess any controlled
7 substances, except as prescribed by a
8 licensed physician for legitimate medical
9 need.

10 You must submit to random, periodic
11 drug testing.

12 You shall not possess any firearms or
13 dangerous weapons, or have them in your
14 residence, on your person, or in your
15 vehicle.

16 You shall refrain from any assaultive,
17 threatening, or harassing behavior.

18 You shall not violate any municipal,
19 state or federal laws or ordinances, and
20 notify your Probation Officer of any contact
21 with law enforcement.

22 You must pay all fines, costs and
23 restitution, as ordered, and set up a
24 schedule with Probation Collections
25 Department.

1 Lastly, I will consider any further
2 refusal to follow a court order a violation
3 of your probation.

4 Ma'am, you have the right to appeal
5 this sentence you just received. You have 10
6 days to ask this Court for reconsideration,
7 and 30 days to appeal to the Superior Court.

8 Thank you.

9 MR. C. GALLO: Your Honor, can we
10 request 30 days to appear for the sentence,
11 to report for the sentence throughout the
12 time of our appeal?

13 THE COURT: I scheduled this on
14 July 1st. This has been going on for over
15 nine months. I'm denying the request for a
16 report date.

17 MR. C. GALLO: Understood, your Honor.
18 Thank you.

19 THE COURT: Thank you.

20 Everyone remain seated until the
21 Defendant is removed from the courtroom,
22 please. And I don't want any outbursts or
23 any other misbehavior.

24 (Thereupon, at 11:20 a.m., the
25 proceedings were concluded.)

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CERTIFICATE

I hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me of the hearing of the above-cause, and that this is a correct transcript of the same.

/s/ Christine B. Mumper
Christine B. Mumper, Court Reporter

- - -

The foregoing record of the hearing of the above-cause is hereby directed to be filed.

/s/ John F. DiSalle, P.J.
JOHN F. DiSALLE, PRESIDENT JUDGE

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

IN RE:

BRENDA DAVIS,
CLERK OF COURTS

)
)
)
)

No. 887 WDA 2022
CP-63-MD-000898-2021

Pa. R. A. P. 1925(a) OPINION

The matter comes before the Superior Court on the appeal of the Brenda Davis, the duly elected Clerk of Courts for the Twenty-seventh Judicial District, Washington County (hereinafter referred to as the "Contemnor"), from the judgment of sentence entered following a finding of direct criminal contempt in violation of 42 Pa. Con. Stat. Ann. § 4132, entered by the lower court on August 4, 2022.

Factual Background

In order to place the contempt proceedings and the Contemnor's behavior and claims in context, a review of the events leading up to the finding of contempt is required. On September 2, 2021, the Contemnor filed in her office and with the Prothonotary of Washington County, a document which she entitled "Waiver of Functions" pursuant to 42 Pa. Con. Stat. Ann. § 2756. In her "Waiver," the Contemnor declared her intention to waive and relinquish various responsibilities of the office of the Clerk of Courts, including, *inter alia*, the filing of DL-26 forms with the Pennsylvania Department of Transportation and the keeping of records and docketing functions for juvenile dependency and delinquency cases. By order of court dated September 8, 2021, the Waiver was subsequently stayed, and, thereafter, returned by the Administrative Office of Pennsylvania Courts ("AOPC") to the Contemnor.¹ An examination of the Waiver showed that

¹ In the Waiver, the Contemnor attempted to relinquish more duties than permitted by statute. The AOPC returned the Waiver because the Contemnor asserted that the Waiver had been executed in conjunction with the court of common pleas, which was false.

it was practically unintelligible and signed by the Contemnor as if she was a judge, but significantly for the instant matter, included a stated intention to cede responsibilities for juvenile court filings. Following the entry of the stay, the court arranged a meeting with the Contemnor and her solicitor, as well as the District Court Administrator, on September 17, 2021, in an attempt to resolve issues concerning the responsibility and effective administration of the office of the Clerk of Courts. That meeting was ultimately unfruitful. On September 29, 2021, as she had promised during the meeting, the Contemnor filed an “Amended Waiver of Functions,” which incorporated the original “Waiver” stating her intention to cede responsibility for administering juvenile court records.

On October 7, 2021, the statewide Juvenile Court Procedural Rules committee approved two proposed local rules of juvenile procedure for the 27th District, Rules 120 and 1120. Both rules provided that for the purposes of juvenile delinquency and dependency case records and filings, the “clerk of courts” would be the Juvenile Probation Office of Washington County. Thereafter, the court filed its Administrative Order adopting the rules on October 15, 2021, along with a second Administrative Order which provided as follows:

[T]he transition of duties from the Clerk of Courts to the Juvenile Probation Office shall occur at the direction of the Court and its designees.

[...]

To effectuate an orderly transition of duties and to safeguard the records of juvenile dependency and delinquency matters, the Court finds it necessary to exercise authority pursuant to Pennsylvania Rule of Judicial Administration 103...Accordingly, the transition of duties may occur earlier than the effective date of Rules L-120 and L-1120, as determined by the Court. The Clerk of Courts shall not cease to carry out any duties, or otherwise make changes to the daily functions involving juvenile matters, without permission of the Court or its designees.

The Administrative Orders and the two local rules of juvenile procedure were served on the Contemnor on October 15, 2021. The local rules were published in the *Pennsylvania Bulletin*, Vol. 51, No. 44, on October 30, 2021, to be effective on Monday, November 29, 2021.

The Chief Juvenile Probation Officer emailed the Contemnor on two separate occasions, October 28, 2021 and November 5, 2021, to attempt to discuss the transfer of juvenile filings and duties. Exhibits G and H. The Contemnor never responded to the emails. On November 5, 2021, the same day as the second email, the Contemnor filed four *pro se* notices of appeal in the Commonwealth Court challenging various administrative actions undertaken by the court, including the Administrative Orders in question and the transfer of the juvenile records. Transcript of Hearing, Aug. 4, 2022, p. 9. On November 19, 2021, the District Court Administrator emailed the Contemnor and respectfully requested that she respond to the Chief Juvenile Probation Officer to discuss the transfer of the juvenile records, acknowledging the appeals but noting that there was no stay requested or entered in conjunction with the appeals. Exhibit J.² Tellingly, the Contemnor responded to the requests for cooperation with a foreshadowing of her contumacious behavior in this matter:

I am an independent elected official and as a county officer I have 1620 rights³ which I am choosing to utilize. I have tried to work with you, the courts, and the commissioners[;] unfortunately[,] all attempts have been met with resistance.

Yes, I have filed several Commonwealth appeals.

If you continue to persist, threaten me with contempt charges, or use any other intimidation factors to remove my staff, files, or statutory duties without a

² An administrative order entered by a President Judge pursuant to 42 Pa. Con. Stat. Ann. § 323 is plainly not an appealable order pursuant to case law, and, by extension, not entitled to an automatic supersedeas. *See, e.g., In re Domitrovich*, 257 A.3d 702 (Pa. 2021). Such an order does not involve claims or parties, nor is it a final or collateral order arising from a case - there is no case or determination to challenge by appeal. The appropriate course to challenge an administrative order is a writ of prohibition with the Supreme Court of Pennsylvania. *In re Domitrovich*, 257 A.3d at 712-714.

³ The "1620 rights" referenced by the Contemnor is the provision of the County Code that prohibits a board of county commissioners from infringing on the authority of a judge or county officer to hire, fire, and supervise employees. 16 P.S. § 1620. Contemnor has repeatedly demonstrated her mistaken belief that section 1620 of the County Code provides her with autonomy from the County government and the Court of Common Pleas. It was nonsensical for the Contemnor to invoke that statutory provision in response to validly promulgated local rules of juvenile procedure. However, in this and other contexts, the Contemnor has repeatedly asserted that this statute essentially permits her to act at her pleasure. It does not.

Commonwealth Court Order[,] **it will be met with opposition.** The courts and commissioners need to be patient and let the Commonwealth Court work this out.

Until I receive a Court Order from the Commonwealth[,] **nothing is being removed from the Clerk of Courts['] office.**

Exhibit J (emphasis added). Of course, at no time did the Chief of Juvenile Probation or the District Court Administrator extend any threats or intimidation in any communications with the Contemnor, rather, they offered polite entreaties to engage her with reality. In accordance with the Administrative Order, as of November 29, 2021, the Monday following the Thanksgiving holiday, the responsibilities for maintaining the dockets and records of juvenile delinquency and dependency cases would no longer rest with the office of the Contemnor; instead, those duties were set to become those of the Juvenile Probation Office. This transfer of duties and responsibility for the juvenile files was not arbitrary, and would require the marshalling of services and assets: it involved rulemaking, weeks of work with the AOPC to re-task the CPCMS, staff allocation, and the physical transfer of thousands of records from one location within the courthouse to another.

At this point, the Contemnor had made it abundantly clear that she would not be cooperating in carrying out the official business of the court that she was elected to serve. After consultation with the Juvenile Probation Chief and the District Court Administrator, the court determined that the last possible day to effectuate a transfer of the physical files was November 24, 2021, the last business day before the Thanksgiving holiday. The local rules were published and effective on Monday, November 29, 2021 (both in the *Pennsylvania Bulletin* and to the Bar Association Journal) and CPCMS was scheduled to transfer to the Juvenile Probation office on that day as well. The court met with the Sheriff on November 23, 2021, to determine the best course of handling the transfer of the physical files. Based on the Contemnor's stated intentions

and behavior, there was concern that she would refuse to cooperate, and refuse to follow the court order. Accordingly, the Sheriff requested that if an order of court was issued compelling her assistance, that said order could be enforced and provide the Sheriff's department with the authority to detain and attach her if she refused to comply.

On November 23, 2021, the Court issued the following Order:

[T]he Chief Juvenile Probation Officer, and any necessary court staff, shall enter the office of the Clerk of Courts to take custody of all juvenile court files for juvenile delinquency and dependency cases from the Clerk of Courts. In accordance with Local Rules L-120 and L-1120, the Juvenile Probation Office is the designated custodian for the juvenile court files.

The Chief Juvenile Probation Officer shall ensure that a notation is made of each juvenile court file transferred from the care of the Clerk of Courts to the Juvenile Probation Office. The Clerk of Courts, and her staff, shall cooperate in the orderly transfer of files.

The Sheriff, or his designee, is DIRECTED to enforce this Order. If the Clerk of Courts, or a member of her staff, refuses or otherwise fails to comply with this Order, the Sheriff shall immediately attach and detain the individual pending proceedings for contempt pursuant to 42 Pa. C.S.A. § 4101, *et seq.*, before the undersigned.

Exhibit K.

On November 24, 2021, the Chief Juvenile Probation Officer and District Court Administrator, accompanied by two deputy sheriffs, served the Contemnor with the 11/23/21 Order. Transcript of Hrg., Nov. 24, 2021, pp. 3-4. They attempted to speak with the Contemnor concerning the Order; however, the Contemnor refused to discuss the Order or *even read it*, and instead began filming everyone on her cellphone. *Id.* at p. 14.⁴ The Contemnor flatly refused to comply with the Order, declaring that she "was an elected official" with "1620 rights" and did not "have to follow the order." *Id.* at p. 4. The Contemnor argued with the deputies and continued

⁴ Based on the record, including the courthouse surveillance camera footage, it appears that the Contemnor first took the time to even read the Order while in the elevator leading to the undersigned's courtroom. *Id.* at p. 11; Exhibit M of August 4, 2022 hearing.

her noncompliance with the Order. *Id.* at pp. 4-5. At that point, the Contemnor ran around the transaction counter of her office and slammed shut the door to the vault that held the juvenile court records, locking it in the process.⁵ *Id.* at p. 5. This was a conscious, deliberate attempt to prevent the transfer of the juvenile court records. The deputies then “attempted to place [the Contemnor] in handcuffs,” but she resisted, struggling and fighting with the deputies. *Id.* at p. 15. Eventually the Contemnor was not handcuffed because she “complained of a back injury.” *Id.*

Following the fracas in her office, the Contemnor was escorted to the undersigned’s courtroom by deputy sheriffs. *Id.* During this time, one of the deputies called for medical assistance for the Contemnor, as a result of her complaints, and emergency medical technicians arrived thereafter. *Id.* at pp. 15-16. By this time, the undersigned was on the bench, waiting for the Contemnor to appear before the court. Transcript of Hrg. Aug. 4, 2022, at p. 10. However, the Contemnor never appeared before the court as she refused to enter the courtroom. At her sentencing, the court made the following finding: the court “could hear [the Contemnor] screaming out, along with her associates, out in the hallway [outside the courtroom], while [President Judge DiSalle] was waiting to address [the Contemnor] for this contempt.” *Id.* at p. 40. The undersigned left the bench and went into an anteroom to confer with the Chief Deputy Sheriff and others. At that point, the court’s law clerk reported that he had gone out – at the court’s direction – to tell the Contemnor to be seated in the courtroom. The Contemnor refused. She received medical attention for complaints of back pain, and, at some point, “heart palpitations.” Transcript of Hrg., Nov. 24, 2021, at pp. 10-13. The paramedic reported to the undersigned that the Contemnor’s heart rate was slightly elevated, but otherwise her vital signs were normal. *Id.* at 12.

⁵ Many offices located within the 120-year-old courthouse still contain vaults with combination locks. Although it has been decades since these vaults were used to contain money or other values, the vaults are used to store files, as had been the case here, or office supplies and other sundries. Only the Contemnor and her deputy had access to the combination to the vault.

On November 24, 2021, following Contemnor's refusal to enter the courtroom and her unauthorized departure from the courthouse, the court took testimony on the record in open court to document the events of the day, including the testimony of multiple deputy sheriffs who were involved. The court found all of the testimony of the deputy sheriffs to be credible, but particularly noted the observations of Deputy Paul Rock, a long-serving member of the Sheriff's Department with significant court-related experience, who reported his involvement with the Contemnor in the hallways and in the ground-level basement of the courthouse:

But she could walk, she was walking, you know. She walked away from us numerous times. She ended up getting down to the basement [of the courthouse] [near the exit].

[...]

At that time, [the Contemnor], you know she was still, like, pushing away, trying to get out the door, you know... You know, one minute she wanted the medics to be there, the next minute she didn't. In my experience, she just wanted to get out of the courthouse. You know, every chance she got, she was walking normal, you know. But you know, we did get her medical attention, but she really, in my eyes, didn't give them a chance to check her out too much.

Id. at pp. 18-19. Deputy Sheriff Edward Schell also noted that the Contemnor, after being attended to by the medics, "got up on her feet and walked out of the courthouse herself." *Id.* at p. 17. The courthouse surveillance footage shows interesting information too, such as the Contemnor jumping out of a wheelchair and scurrying out of the elevator upon seeing that it was headed for the courtroom floor and not the basement and exit. Exhibit M. The footage also shows that the Contemnor walked downstairs from the courtroom to her office to retrieve belongings, and then put on her coat and hat, indicating behavior of someone who is leaving and not coming up from their office (one floor down) to the courtroom. All of this indicated that rather than face the consequences of her actions, the Contemnor "absconded from the courthouse." Order of Sentence, No. MD-898-2021, Aug. 5, 2022.

On November 24, 2021, the Contemnor filed a fifth appeal with the Commonwealth Court, challenging the adoption of the aforementioned local rules of juvenile procedure, a sixth appeal on November 30, 2021, and a seventh appeal on November 30, 2021.⁶ All seven appeals were quashed on February 4, 2022.

Following the Contemnor leaving the courthouse on November 24, 2021 (again, without the permission of the Court), the continuation of the contempt proceeding was scheduled for Monday, November 29, 2021. That proceeding was rescheduled for December 6, 2021, at the request of the Sheriff's Department, which urged for additional time to arrange for adequate security for the proceeding, and to avoid further disruption of other court proceedings. In the meantime, the Contemnor filed for a Petition for Emergency Stay in the Superior Court, which was denied on December 2, 2021. However, on the afternoon of Friday, December 3, 2021, the Commonwealth Court granted a second request from the Contemnor to stay the contempt proceedings. The stay was lifted on February 4, 2022, as the Commonwealth Court found that because a punishment had not yet been imposed on the Contemnor, the appeal was interlocutory and was dismissed. *See* Docket No. 1332 CD 2021, Order of February 4, 2022.

The resumption of the contempt proceeding was then scheduled for February 28, 2022. On February 22, 2022, the Contemnor filed an Application for Writ of Prohibition and Emergency Stay with the Supreme Court.⁷ In light of the Writ of Prohibition and upon advice of the AOPC's legal department, the Court continued the contempt proceeding generally, pending disposition of the Writ of Prohibition. The Supreme Court denied the Writ by *per curiam* order on June 23, 2022. Subsequently, the contempt proceeding was scheduled to resume on August 4, 2022, in order to

⁶ The Commonwealth Court docket numbers were: Nos. 1222 CD 2021; 1223 CD 2021; 1224 CD 2021; 1225 CD 2021; 1332 CD 2021; 1333 CD 2021; and 1334 CD 2021.

⁷ The Supreme Court docket number was No. 5 WM 2022.

allow time for the return of the record and for the Contemnor to have adequate time to secure counsel.⁸

Following the hearing on August 4, 2022, at which Contemnor was present and represented by her current counsel, the court found the Contemnor guilty of direct criminal contempt in violation of 42 Pa. Con. Stat. Ann. § 4132, as a result of her behavior:

Refusing to follow the Court's Order on November 23, 2021;
Locking the vault, restricting access to the Juvenile files;
Refusing to submit to the Deputies;
Refusing to come into the courtroom to be addressed by the Court;
and
Engaging in misbehavior immediately outside the courtroom, which created such a disruption that it spilled over three floors of the courthouse until [the Contemnor] absconded from the courthouse.

Order of Sentence dated August 5, 2021, No. MD-898-2021. The Contemnor was then sentenced to a term of imprisonment of no less than fifteen (15) days to no more than six (6) months, a \$5,000.00 fine, and to pay the costs of prosecution. *Id.* Upon the completion of her minimum sentence, the Contemnor was then paroled for the balance of the six (6) months, to the supervision of the Adult Probation Office. A timely appeal was filed on August 8, 2022.

Issues on Appeal

In her concise statement of matters complained of on appeal, the Contemnor alleges the following errors:

1. Whether the Trial Court erred in finding Appellant guilty of Direct Criminal Contempt, pursuant to 42 Pa. C.S. § 4132, as Appellant was never scheduled or notified to appear before President Judge DiSalle on the date in question. Rather the Deputy Sheriffs presented an Order, made their own determination of contempt and manually forced Appellant within earshot of the President Judge. Once within earshot, the Trial Judge

⁸ Because of the length of time between the contumacious acts and the levy of the punishment, the court decided to provide the Contemnor with the opportunity to have counsel present and to be heard at the proceedings. Had the Contemnor not absconded from the courthouse on November 24, 2021, to avoid facing the consequences of her deplorable behavior, she would not have been entitled to either of those due process protections.

would later testify that he was disrupted by noise emanating from Appellant. This is clearly not the spirit or intent of the Criminal Contempt Statute.

2. Whether it was error that President Judge DiSalle found Appellant Guilty of Criminal Contempt, "an ungraded Misdemeanor." Appellant charges error with the finding of Direct Criminal Contempt, further compounded by the Trial Court grading said conviction as an "ungraded misdemeanor." A violation of 42 Pa. C.S. § 4132 is merely a summary offense, punishable by no more than 90 days, with a maximum of fifteen (15) days of incarceration. The Trial Court's sentence is [sic] mis-graded and therefore illegal.
3. Appellant raises further error with the sentence of President Judge DiSalle, in that Appellant was sentenced to a period of incarceration for no less than fifteen (15) days and no more than six (6) months in the Washington County Correctional Facility. Upon completion of her minimum sentence, Appellant was further ordered to be paroled to the supervision of the Washington County Probation Office to complete the remainder of her sentence. In addition, a fine of \$5,000.00 was levied against Appellant. It is Appellant's position that a maximum fine of \$100 was applicable to a conviction of 42 Pa. C.S. § 4132, pursuant to 42 Pa. C.S. § 4133.

Legal Analysis

It is well-settled that the standard of review for an order finding an individual in contempt is "extremely narrow." *Estate of Baehr*, 596 A.2d 803, 805 (Pa.Super.1991), *appeal dismissed*, 618 A.2d 944 (Pa. 1993). Upon review, the appellate court places

great reliance on the discretion of the trial judge. Each court is the exclusive judge of contempts against its process, and on appeal its actions will be reversed only when a plain abuse of discretion occurs. In cases of direct criminal contempt, that is, where the contumacious act is committed in the presence of the court and disrupts the administration of justice, an appellate court is confined to an examination of the record to determine if the facts support the trial court's decision.

Commonwealth v. Williams, 753 A.2d 856, 861 (Pa.Super.2000) (citing *Commonwealth v. Jackson*, 532 A.2d 28, 31-32 (Pa.Super.1987)); *see also Commonwealth v. Diaz*, 191 A.3d 850, 864 (Pa.Super.2018) (citing *Commonwealth v. Bowden*, 838 A.2d 740 (Pa. 2003)). "Discretion is abused when the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied." *Diaz*, 191 A.3d at 864 (quoting *Bowden*, 838 A.2d at 762).

The first two allegations of error are centered on the statute governing direct contempt. That statute, entitled "Attachment and summary punishment for contempts," states in its entirety:

The power of the several courts of this Commonwealth to issue attachments and to impose summary punishments for contempts of court shall be restricted to the following cases:

- (1) The official misconduct of the officers of such courts respectively.
 - (1.1) The willful failure of the officers of such courts to disclose a person's complete criminal history record information when requested.
- (2) Disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.
- (3) The misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.

42 Pa. Con. Stat. Ann. § 4132. Over forty years ago, our Supreme Court succinctly explained the differences between the three main subsections of the statute:

Subsection (1) has been held to pertain only to court officials performing ministerial duties, while subsection (2) provides punishment for failure to comply with lawfully issued orders, decrees and process. Subsection (3) applies to conduct, such as that in the instant case, "occurring in or near the courtroom."

Matter of Campolongo, 435 A.2d 581, 583 (Pa. 1981) (citing *Commonwealth v. Garrison*, 386 A.2d 971, 978 (Pa. 1978) and *In re Johnson*, 359 A.2d 739, 741 (Pa. 1976)) (footnotes omitted).

Thus, the statute defines contempt not by the class of person, but rather the type of conduct. *Garrison*, 386 A.2d at 979 ("No satisfactory definition of contemptuous misconduct has been developed. Perhaps the best definition is that misconduct is behavior that is inappropriate to the role of the actor."). In this instance the Contemnor has accomplished an unprecedented spectacle of behavior that violates all three subsections of the statute. As stated on the record during the proceeding on August 4, 2022, on November 24, 2021, Contemnor refused to enter the courtroom with the dignity of an elected official to politely and intelligently discuss her opposition to the administrative order to transfer responsibility of the juvenile court files. Instead, Contemnor chose to perform the most undignified display of behavior that the undersigned had ever witnessed in

over 35 years in the legal system as a prosecutor, private practice attorney, and 17 years as a common pleas judge.⁹

The Contemnor first claims that there can be no contemptible behavior because the Court failed to schedule or notice a proceeding before the Court on November 24, 2021, and that the deputy sheriffs made their own determination of contempt. This claim is without merit. To begin, a formal order is not even necessary for an officer of the court to be punished for the commission of misconduct, let alone a scheduling notice as a condition precedent. *Matter of Johnson*, 359 A.2d 739 (Pa. 1976). In *Matter of Johnson*, the Supreme Court held that

Subsection I permits the courts of the Commonwealth to compel their officers properly to perform their ministerial duties. For example, sheriffs must serve process, court reporters must record and transcribe testimony and prothonotaries must receive, date and file documents. Misconduct of any of these prescribed duties, which are imposed upon the individual by virtue of the official position held, is made punishable by subsection I. There need be [sic] no formal order directing the individual to do an act nor does the misconduct have to be within the presence of the court. Subsection I authorizes the court to punish the misconduct of any of the day to day functions necessary to the administration of justice.

359 A.2d at 741.¹⁰

In this matter, it is the ministerial duty of the office of the Clerk of Courts to manage files for the court. In addition, there was a formal order directing the Contemnor to carry out a specific administrative task involving the transfer of juvenile court records, and a clear directive to the Sheriff and his designee(s) of how to proceed if the Contemnor refused to follow the order. The order provided for the Chief Juvenile Probation Officer to take custody of all juvenile court files

⁹ The court noted that this included his experience presiding over mental health treatment court for 7 years, where participants diagnosed with serious mental illness occasionally break down in open court, but are able to be brought under control within several minutes. Transcript of Hrg., August 4, 2022, at pp. 37-38.

¹⁰ There is no question that a clerk of courts is a ministerial officer in exactly the same vein as a prothonotary. *In re Admin. Order No. 1-MD-2003*, 936 A.2d 1, 9 (Pa. 2007) (holding that the powers of a clerk of courts are “clearly ministerial in nature.”); *Miller v. County of Ctr.*, 135 A.3d 233, 238 (Pa. Cmwlth. 2016), *aff’d*, 173 A.3d 1162 (Pa. 2017) (a clerk of courts “serve[s] the courts in an administrative capacity.”). Moreover, a clerk of courts possesses no authority to “interpret statutes and to challenge actions of the court that the clerk perceives to be in opposition to a certain law.” *In re Admin. Order No. 1-MD-2003*, 936 A.2d at 9.

to facilitate their transfer pursuant to the recently promulgated rules of juvenile procedure. In addition, the order required the following of the Contemnor: “The Clerk of Courts, and her staff, shall cooperate in the orderly transfer of files.” Administrative Order dated November 23, 2021. Lastly, the order directed the Sheriff to immediately attach and detain the Contemnor – a ministerial officer of the court – pending a contempt proceeding if she refused or failed to comply with the order. The order could not have been clearer that the Contemnor was to cooperate with the transition and not interfere with the orderly transfer of juvenile case filings. Instead, the Contemnor intentionally locked the vault door to obstruct the fulfillment of the court’s order and the validly promulgated rules of local procedure that would be effective at the beginning of the next business day. The immediate attachment was necessary and proper to effectuate the business of the court and the administration of justice. The language of the order was more than sufficient to put the Contemnor on notice that engaging in willful defiance would be considered contumacious. *See Himes v. Himes*, 833 A.2d 1124 (Pa. Super. Ct. 2003) (attorney found in contempt for not appearing at a scheduled hearing after being advised to appear or face immediate contempt proceedings).

The Contemnor also claims that because she was able to avoid entering the courtroom and since her contumacious behavior was in the hallway, and not in the presence of the court, the court is powerless to find her in contempt, and therefore, she could not be punished at all. This is a misreading of § 4132 and the relevant case law. As the Supreme Court noted in *Commonwealth v. Falana*, 696 A.2d 126, 128 (Pa. 1997), it is only a conviction pursuant to § 4132(3) that requires misconduct in the presence of the court.¹¹

¹¹ It is plainly erroneous to state, as the Contemnor has, that no punishment may be imposed whatsoever, even if assuming, *arguendo*, that the conduct was not in the presence of the court. All of the examples of misconduct under § 4132(1) are of a type that occur outside of a courtroom or the presence of a jurist, or perhaps the judicial facility itself. A judge does not have to actually witness the prothonotary refuse to file an order, or the Sheriff decline to serve

A conviction pursuant to section 4132(3) requires proof beyond a reasonable doubt: (1) of misconduct, (2) in the presence of the court, (3) committed with the intent to obstruct the proceedings, (4) which obstructs the administration of justice. *Campolongo; Commonwealth v. Martorano*, 387 Pa.Super. 79, 563 A.2d 1193 (1989). To obstruct justice, conduct must significantly disrupt proceedings. *Campolongo*. We noted in *Commonwealth v. Garrison*, 478 Pa. 356, 386 A.2d 971 (1978) (plurality opinion), that contempt requires actual, imminent prejudice to a fair proceeding or **prejudice to the preservation of the court's orderly procedure and authority**.

Commonwealth v. Falana, 696 A.2d at 128 (citations omitted) (emphasis added).

In her Concise Statement, the Contemnor attempts to minimize the presence requirement by alleging that she was only “within earshot of the President Judge.” At the sentencing proceeding, this Court made, *inter alia*, the following findings:

On November 24th, obviously, Ms. Davis refused to comply with the order, locked the vault door. The files happened to be contained in the vault in the Clerk of Court’s office, and when presented with the [o]rder, she slammed the door shut, and locked the door, spun the dial so that it could not be accessed.

She refused to come [in]to my courtroom when brought up here by the [d]eputies. I was waiting in court for this purpose. I could hear her screaming outside my doorway. She never did come into the courtroom.

...

[During the proceeding on August 4, 2022, the court played for the record the entirety of courthouse security camera footage, Exhibit M, Surveillance Footage.]

...

I will note for the record that after refusing to come in the courtroom, Ms. Davis now has her hat and coat on.

The Contemnor absconded from the courthouse quickly thereafter.

Transcript of Hrg., Nov. 24, 2021, at pp. 9-11.¹²

process, or watch over the shoulder of a recalcitrant court reporter. Rather, it is an inherent authority that permits the court to enforce the necessary duties attendant to the business of the courts and the administration of justice. To find otherwise would be absurd. Additionally, there was a lawful, written, and filed order that the Contemnor was literally holding in her very hands while she was intentionally violating it.

¹² There was no video footage available of the Contemnor’s deliberate act of locking the vault door shut because the Contemnor had personally removed the security camera from her office on October 18, 2021, without the court’s permission or the approval of the County Commissioners or the Information Technology department. Transcript of Hrg., August 4, 2022, at pp. 12, 30-32.

As the proceeding continued, the Contemnor's counsel acknowledged that she refused to come into the courtroom and that the Court heard the commotion, and then conceded that this willful behavior was contumacious:

MR. DePASQUALE: I understand your position that you were in the courtroom and heard things outside; and also, that the Clerk of Courts refused to enter the Courtroom.

However, I don't believe that constitutes Direct Contempt, Direct Criminal Contempt, any time I've ever heard of it or read of it, is something that actually occurs in the presence of the judge.

We're not arguing about the contempt, because there was an order, and the order was not complied with.

Transcript of Hrg., Nov. 24, 2021, at pp. 13-15. The Contemnor offered nothing in defense of her contumacious behavior, other than to state that she was "assaulted" by the Sheriff's deputies, a claim belied by the surveillance video footage,¹³ and to offer an insincere apology. Thus, the Contemnor's argument is based on a tortuous and strained understanding of when behavior is considered to be in the presence of the court.

The courts of our Commonwealth have long recognized a broader definition of what constitutes the "presence" of the court than the Contemnor is willing to accept. "Misconduct occurs in the presence of the court if the court itself witnesses the conduct or if the conduct occurs outside the courtroom but so near thereto that it obstructs the administration of justice." *Falana*, 696 A.2d at 129 (quoting *Garrison, supra*, and citing *United States v. Wilson*, 421 U.S. 309, 315 n. 6 (1975)). In *Falana*, the defendant uttered a threat to the victim upon leaving the courtroom following sentencing. Despite the fact that the trial judge did not hear the threat himself, the Supreme Court affirmed the imposition of direct contempt pursuant to § 4132(3), holding that the

¹³ The Contemnor's claim of being assaulted is also refuted by the report of the Attorney General's Office, who investigated her allegations after she attempted to file criminal charges against the deputy sheriffs, which reported that the allegations were unfounded. Transcript of Hrg., August 4, 2022, at pp. 23-24, 40.

presence of the court factor is satisfied regardless of whether (1) the temporal location is inside or outside of the courtroom; and (2) the judge actually hears the statement. *Id.* Thus, there is no obligation for the court to prove that it actually witnessed the disturbance. *Commonwealth v. Moody*, 125 A.3d 1, 10-11 (Pa. 2015) (citing *Falana, supra*, and *In re Terry*, 128 U. S. 289 (1888)); *see also Commonwealth v. Brown*, 622 A.2d 946 (Pa.Super.1993) (summarizing expansive view of the presence of the court requirement); *In re MacDonald*, 168 A. 521 (Pa.Super.1933) (threat made in rear of courtroom and heard by tipstaff was contemptuous). The Supreme Court in *Moody* explicitly rejected the narrow reading of an act being “‘in the presence of the court,’ with that of it being ‘personally observed’ by the court.” *Moody*, 125 A.3d at 12. Contempt, therefore, can occur not only within direct sight of the Court, but, importantly, within its view when in session: “the court, at least when in session, is present in every part of the place set apart for its own use, and for the use of its officers, jurors, and witnesses: and misbehavior anywhere in such place is misbehavior in the presence of the court.” *Id.*, quoting *Ex parte Savin*, 131 U. S. 267, 277 (1889).

Instantly, there is no question that the court heard the misconduct that disrupted the administration of justice. The scene of the Contemnor’s willful disobedience reverberated throughout the courthouse and gathered a multitude of onlookers. The court received a telephone call from an eyewitness to the disturbance who described the Contemnor’s struggle with the deputy sheriffs. Perhaps most importantly, the court sat ready at the bench to initiate the contempt proceeding while listening to the commotion of the Contemnor’s misconduct right outside the courtroom doors, *i.e.*, the Contemnor’s refusal to answer for her intentional defiance of the court’s order to facilitate the transfer of the juvenile cases. Upon retiring to chambers to consult with the Sheriff and other officers of the court, the court’s law clerk reported that the Contemnor flatly declined the direction to enter the courtroom. Unquestionably, the Contemnor committed

misconduct in the presence of the court, thereby satisfying the dictates of the case law in *Moody* and *Falana, supra*.

Moreover, all of the behavior of the Contemnor occurred in the courthouse. The office of the Clerk of Courts is bookended on both sides by judicial chambers and courtrooms. The Contemnor's dramatic behavior and resistance to the commands of the court, its staff, and Sheriff's deputies occurred in the elevator and hallways of over three floors of the courthouse, including those adjacent to the undersigned's courtroom. She stood directly outside the courtroom and emphatically refused to enter it. As the Supreme Court in *Moody* noted, the court includes "every part of the place set apart for its own use, and for the use of its officers . . . and misbehavior anywhere in such place is misbehavior in the presence of the court." *Moody*, 125 A.3d at 12 (emphasis added). The Constitution and Judicial Code are abundantly clear that the clerk of courts is a ministerial officer of the court; thus, her actions in and near the courtroom(s), adjacent hallways, and the clerk's office in the courthouse are within the presence of the Court.

Furthermore, the Contemnor obstructed the administration of justice in front of Sheriff's deputies, the Chief Juvenile Probation Officer, and the District Court Administrator, all of whom were either serving and/or executing the order – directed to an inferior officer of the court and in the courthouse – on behalf of the court as its agents, and, therefore, the conduct was clearly in the presence of the court. *In re Order for Destruction of Gambling Devices*, 32 Berks 193 (C.P. Berks 1940), *rev'd on other grounds, Appeal of Marks*, 20 A.2d 242 (Pa.Super.1941); *but cf. Altemose Const. Co. v. Building and Const. Trades Council of Philadelphia*, 296 A.2d 504 (Pa. 1972), *cert. denied*, 411 U.S. 932 (1973). It has also been held that a failure to follow the instructions of the Sheriff's deputies or court attendants in court is contumacious behavior. *See Commonwealth v.*

Patterson, 308 A.2d 90 (Pa. 1973) (defendants held in contempt after engaging in violent altercation with deputies and court attendants while attempting to leave courtroom).

Lastly on this issue, the record establishes that the undersigned was ready and awaiting the Contemnor in the courtroom. The Supreme Court has defined an “‘open court’ as one ‘which has been formally convened and declared open for transactions of its proper judicial business.’” *Commonwealth v. Ferrara*, 409 A.2d 407, 411 (Pa. 1979) (citing Black’s Law Dictionary (1968); *Brown*, 622 A.2d at 948-949. In this instance, the Contemnor was personally served the order, which advised that she would be attached and detained for immediate contempt proceedings *if* she failed to cooperate in the transfer of the juvenile cases. The Contemnor refused to even read the order, let alone follow the order, and instead chose to actively obstruct the process in contravention of the order. Once detained by the Sheriff’s deputies (after physically struggling with them), she deliberately refused to enter the courtroom as commanded for contempt proceedings. An individual acts in disobedience or neglect of the lawful process of the court when not appearing in court; this act “is no less contemptuous than the conduct of a witness who appears but refuses to testify and is deserving of no lesser punishment.” *Ferrara*, 409 A.2d at 411; *see also Commonwealth v. Marcone*, 410 A.2d 759 (Pa. 1980) (affirming finding of direct criminal contempt against attorney who failed to appear for call of the trial list). In other words, failure to appear in open court can be contemptuous conduct punishable by a term of imprisonment.¹⁴ The court was in session and the Contemnor consciously and defiantly refused to appear before the undersigned despite being ordered to do so. In addition, the Contemnor, an officer of the court,

¹⁴ In *Ferrara*, the husband and wife defendants were required to appear in court as a condition of their bails. They failed to appear on the dates for arraignment and trial and were sentenced to four months and two months of imprisonment, respectively.

willfully obstructed the carrying out of an order transferring the custody of juvenile court files. Such actions constitute direct criminal contempt.

The Contemnor's second and third alleged errors challenge the sentence imposed by the court. Specifically, she asserts that her sentence is illegal pursuant to § 4133 of the Judicial Code.

The statute states, in its entirety:

Except as otherwise provided by statute, the punishment of commitment for contempt provided in section 4132 (relating to attachment and summary punishment for contempts) shall extend only to contempts committed in open court. All other contempts shall be punished by fine only.

42 Pa. Con. Stat. Ann. § 4133.

By its very language, § 4133 permits a court to sentence a contemnor to a term of imprisonment for direct contempt pursuant to § 4132(3), *i.e.*, in the presence of the court. *See, e.g., Moody*, 125 A.3d 1; *Brown*, 622 A.2d 946; *Ferrara*, 409 A.2d 407; *Patterson*, 308 A.2d 90. As detailed above, the Contemnor engaged in willful, deliberate acts of contempt in the presence of the court; therefore, a term of imprisonment is plainly permissible under the language of the statute. The only limitation on the term of imprisonment is if said term lasted beyond six months, then the right to a jury trial would attach. *Commonwealth v. Mayberry*, 327 A.2d 86 (Pa. 1974); *accord In re Arrington*, 214 A.3d 703, 709 (Pa.Super.2019) (maximum sentence for criminal contempt may not exceed six months).¹⁵ A flat sentence, *i.e.*, one lacking a minimum and maximum would also violate the Sentencing Code, but that is inapplicable in the instant matter.

¹⁵ There is a dearth of case law addressing the grading of a criminal contempt offense, which is not included within the Criminal Code but is instead an inherent judicial authority addressed in the Judicial Code. That said, criminal contempt, direct or indirect, is punishable by up to six months of imprisonment; therefore, it cannot be a summary offense because such offenses are limited to a maximum of ninety days' imprisonment if following the definitions within the Crimes Code. 18 Pa. Con. Stat. Ann. § 106; *cf. Commonwealth v. Clark*, 472 A.2d 617, 618-619 (Pa. Super. Ct. 1984) (direct criminal contempt is neither a felony nor a misdemeanor for purpose of Rule 1100 (now Rule 600) of the Rules of Criminal Procedure). In any event, the grading is immaterial to the fact that the Contemnor's sentence of imprisonment is within the allowable confines acknowledged in our Commonwealth's case law.

Commonwealth v. Cain, 637 A.2d 656 (Pa.Super.1994); *Commonwealth v. Moody*, 46 A.3d 765, 770 n. 4 (Pa. Super.2012), *rev'd on other grounds*, *Commonwealth v. Moody*, 125 A.3d 1 (Pa. 2015); 42 Pa. Con. Stat. Ann. § 9756(a)-(b).

Moreover, § 4133 is an unconstitutional infringement of the Court's inherent authority to set forth the punishment for direct criminal contempt. *Commonwealth v. McMullen*, 961 A.2d 842 (Pa. 2008) (declaring the limitation on the punishment for indirect criminal contempt pursuant to 42 Pa. Con. Stat. Ann. § 4136(b) as unconstitutional); *see also*, 18 Pa. Con. Stat. Ann. § 107(b) and (c) (abolishing common law crimes but not affecting the power of a court to punish for contempt).¹⁶ Our Supreme Court has long recognized that the power to impose punishment for criminal contempt is not derived from legislation, but "is a right inherent in courts and is incidental to the grant of judicial power under Article 5 of our Constitution." *Marcone*, 410 A.2d at 763.

In *McMullen*, the Supreme Court declared 42 Pa. Con. Stat. Ann. § 4136, which specified the punishment a court could impose for indirect criminal contempt, to be unconstitutional. *McMullen*, 961 A.2d at 848. Section 4136(b) had purported to limit a court's authority to punish for indirect criminal contempt to a maximum fine of \$100.00 and 15 days' imprisonment. 42 Pa. Con. Stat. Ann. § 4136(b). The Supreme Court explained the following:

Initially, we note § 4136(b) is not in the Crimes Code, but under Title 42—Judiciary and Judicial Procedure, Chapter 41—Administration of Justice, Sub—Chapter C.—Contempt of Court. We are thus left with a legislative creation of indirect criminal contempt under § 4136. Since courts have the authority to punish individuals in violation of their orders under the case law described above and § 107(c), the legislature cannot create a form of indirect criminal contempt and restrict a court's ability to punish individuals who commit contempt of court. While the legislature generally may determine the appropriate punishment for criminal conduct, indirect criminal contempt is an offense against the court's inherent authority, not necessarily against the public. Section 4136(b) provides maximum penalties the court may impose; thus, § 4136(b) unconstitutionally restricts the court's ability to punish for contempt.

¹⁶ Issues related to the legality of a sentence are reviewed *de novo*, and the scope of review is plenary. *Commonwealth v. McKown*, 79 A.3d 678, 691 (Pa. Super. Ct. 2013).

McMullen, 961 A.2d at 849-850.

Turning to § 4133, the court is aware that the Supreme Court declined to explicitly address the “other statutory law concerning contempt” in *McMullen*. *Id.* at 850, n. 6. However, § 4133 is virtually indistinguishable from the subsections of § 4136 that the *McMullen* decision declared unconstitutional. Applying the same framework as the Supreme Court in *McMullen*, there is little doubt that § 4133 is also an impermissible intrusion on the inherent authority of the courts of our Commonwealth to punish individuals who commit direct contempt of court. This is the result urged by Chief Justice Castille in *McMullen*:

In my view, the General Assembly cannot dictate to the courts what is adequate punishment to vindicate a court’s authority. Indeed, to concede such a power would be to allow the General Assembly, in theory, to destroy the judiciary’s ability to address contempt: for what would there be to prevent the General Assembly from limiting punishment to something completely toothless such as, for instance, a five dollar fine?

Id. at 854 (Castille, C.J., concurring). A similar note was struck in Justice Greenspan’s concurrence too. *Id.* at 855, n. 2 (Greenspan, J., concurring) (“One could argue that Section 4133 likewise constitutes an infringement on a court’s authority to enforce its own orders. However, that statute is not before us in this case.”). Other courts and commentators have reached the same, inevitable conclusion that the legislature has encroached too far with § 4133. *See, e.g., Commonwealth v. Leomporra*, 2020 WL 6821633 (Pa.Super.2020); *Commonwealth v. Allen*, 2015 WL 6957090 (Pa.Super.2015); *Commonwealth v. Leonard*, 2014 WL 10979687 (Pa.Super.2014); *Commonwealth v. Morgret*, Nos. SA-53-2014 and SA-63-2014 (C.P. Lycoming February 25, 2015); *Commonwealth v. Phillips*, 2014 WL 8105545 (C.P. Phil. July 29, 2014); Daniel P. Sodroski, *Unraveling the Uncertainties of the Separation of Powers between Pennsylvania’s General Assembly and the Judiciary in the Field of Criminal Contempt: The Constitutionality of Pennsylvania’s Criminal Contempt Statutes after Commonwealth v. McMullen*, 53 DUQUESNE

LAW REVIEW, 567, 605 (2015) (analyzing history of contempt and separation of powers and concluding that § 4133 is likely unconstitutional because it limits the power of the court to set an appropriate penalty for contempt); accord, *In re Thirty-Fifth Statewide Investigating Grand Jury*, 112 A.3d 624, 630-631 (Pa. 2015) (“Regarding separation-of-powers concern, this Court has strongly defended the independent role of the judiciary in vindicating the authority ascribed to it by the Constitution, particularly as relates to conduct which is contemptuous of a court”) (citing *McMullen, supra*). Accordingly, the sentence of the Contemnor is permissible and an appropriate punishment for her outrageous behavior and direct criminal contempt of the court’s authority.

Conclusion

The Judicial Code provides that every court, including the court of common pleas, “shall have the power to make such rules and orders of court as the interest of justice or the business of the court may require” unless otherwise proscribed by general rule. 42 Pa. Con. Stat. Ann. § 323. The president judge of a court of common pleas is vested with the authority to

Be the executive and administrative head of the court, supervise the judicial business of the court, promulgate all administrative rules and regulations, make all judicial assignments, and assign and reassign among the personnel of the court available chambers and other physical facilities.

42 Pa. Con. Stat. Ann. § 325(e)(1). On the other hand, the clerk of courts is an inferior officer of the court who wields powers that are “strictly administrative” and “purely ministerial in nature.” *Commonwealth v. Williams*, 106 A.2d 583, 588-589 (Pa. 2014) (citing *In re Administrative Order No. 1-MD-2003*, 936 A.2d 1, 9 (Pa. 2007)). While the functions of the clerk of courts are vitally important to the business of the courts and, in this County at least, carried out by an elected official, her authority is limited by either statute or rule of court. *In re Administrative Order No. 1-MD-2003*, 936 A.2d at 9. It is beyond peradventure that the clerk has “no judicial powers” and lacks

the “discretion to interpret statutes.” *Id.* Our Supreme Court has unambiguously held that: (1) a clerk cannot “challenge actions of the court that the clerk perceives to be in opposition to a certain law”; and (2) “it is not the function of the clerk of courts to interpret the administrative orders of the court of common pleas to determine whether they comply with the law.” *Id.* It is with this backdrop that the court notes the familiar refrain that in the context of contempt, “[m]isconduct is behavior that is inappropriate to the role of the actor.” *See, e.g., In re Arrington, supra; Falana, supra.*

As the court found and as detailed above in the discussion:

1. The Contemnor sought to waive a multitude of the duties of her office, including the administration of the juvenile court records which were the subject of the order in question. Attempts at resolving the Contemnor’s “waiver of duties” were unsuccessful.
2. The court promulgated two approved local rules of juvenile procedure, the effect of each was to transfer the duties of the clerk of court for juvenile records and filings to the Juvenile Probation Office.
3. The Contemnor manifested in writing her intent to obstruct the facilitation of the local juvenile rules, and substituted her own misguided interpretations of the law.
4. The court issued multiple administrative orders regarding the transfer of the juvenile records, including the order dated November 23, 2021, requiring the Contemnor – an officer of the court – to cooperate.
5. Demonstrating her willful disobedience, the Contemnor refused to read or acknowledge the administrative order and locked the door to the vault of her office in an attempt to obstruct the court’s access to the juvenile court files and to obstruct the business of the court and defy a judicial directive.

6. The Contemnor struggled and actively resisted the attempts of the deputy sheriffs to detain and attach her and bring her before the court.
7. The Contemnor verbally and through her physical actions refused to enter the courtroom of the undersigned for contempt proceedings. Then, after receiving medical attention, she willingly absconded from the courthouse to avoid the consequences of her actions.
8. A series of appellate actions initiated by Contemnor (all of which were quashed, denied, or dismissed, but which required the court's response, significant time, and attention), led to a series of delays.
9. The Contemnor never sincerely acknowledged, explained or apologized for her contumacious behavior. In fact (and as captured in the transcript), her attorney had to urge her to provide some type of apology at sentencing.
10. The transfer of the juvenile court records was completed without any cooperation or participation from the Contemnor.

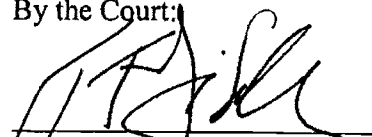
This case represents the breakdown of an orderly system of justice. It answers the question of what would happen if an official were to ignore the law, or worse, sabotage the functions of a branch of government. The Contemnor is the clerk of courts for the 27th Judicial District. Her job is to follow the rules and orders of the court. She chose not to do so in dramatic fashion. The lower court submits that the members of the Superior Court review the courthouse security footage, Exhibit M, in its entirety. The security video clearly depicts the Contemnor carrying on and resisting the commands of the Sheriff's deputies. The video clearly depicts the outrageous spectacle she caused, sliding down the wall in the hallway after faking an injury from a deputy sheriff putting his hand on her arm. The Contemnor is then seen laying on the floor and rolling around on the ground, all while contorting herself to take "selfies" and videos with her cell phone.

Members of the public and other court personnel are seen walking by and stepping over her during her tantrum. And then, finally, the Contemnor is shown getting up unassisted and walking out of the courthouse. As stated, this was the most undignified and disgraceful display of behavior in the courthouse that the court has witnessed throughout his career. The Contemnor's behavior was an affront to the court's orderly procedure and authority, and to the structure and powers of the unified judicial system. The Contemnor's alleged errors essentially boil down to one argument, that the imposition of the term of incarceration is an inappropriate sanction for her acknowledged and undisputed contumacious behavior. However, the sanction was tailored to fit the conduct the Contemnor exhibited. The Contemnor fails to demonstrate that both the finding of and sentence imposed for contempt was unlawful or was otherwise inappropriate for the outrageous misbehavior of someone in her position.

Accordingly, for the foregoing reasons, the lower court submits that the finding of contempt and judgment of sentence against the Contemnor, Brenda Davis, should be affirmed and the appeal dismissed.

Date: 4/6/2023

By the Court:



John F. DiSalle, P.J.