

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT****PRIVATE PROPERTIES, LLC., et al.****Petitioners****v.****TOM WOLF, GOVERNOR, and JOSH
SHAPIRO, ATTORNEY GENERAL,****Respondents****No. 90 MM 2020**

**RESPONSE TO PETITIONERS'
REQUEST FOR LEAVE TO FILE REPLY BRIEF**

On May 12, 2020, Petitioners (collectively the Landlords) filed a Petition for Extraordinary Relief Pursuant to the Court's King's Bench Jurisdiction, asking this Court to invalidate Governor Tom Wolf's May 7, 2020, Executive Order. This Order, issued pursuant to his authority under the Emergency Services Management Code, 35 Pa.C.S. § 7101, *et seq.*, temporarily stays certain notice requirements for instituting new foreclosure and eviction actions.¹ With nearly 15% unemployment nationwide, the Governor found it necessary to issue this order to prevent a mass of

¹ Yesterday, the Governor amended that Order, fine-tuning its scope to "apply only to matters involving the nonpayment of monies as well as to those proceedings related to removal of any tenant solely because the tenant has held over or exceeded the term of a lease." See May 21, 2020 Executive Order, <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200521-TWW-amendment-to-dispossession-of-property-order.pdf>.

homelessness and intra-state migration during the largest public health crises in a century.

The gravamen of the Landlords' contention is that the Governor lacked authority under the Emergency Services Management Code and that the Order violates substantive due process. The Landlords styled and filed this action as an emergency. Accordingly, this Court ordered Governor Tom Wolf and Attorney General Josh Shapiro (collectively "Commonwealth Officials") to file a response by Monday, May 18, 2020 at noon. The Commonwealth Court Officers filed their response, fully arguing with support, that the Court should accept King's Bench jurisdiction, but deny the petition for extraordinary relief.

In their petition, the Landlords were obligated to "state with particularity the grounds on which [the application was] based." Pa.R.A.P. 123(a). Moreover, Rule 123(a) provides that "[a]ll grounds for relief demanded shall be stated in the application and failure to state a ground shall constitute a waiver thereof." *See also Meyer, Darragh, Buckler, Bebenek & Eck. v. Law Firm of Malone Middleman*, 179 A.3d 1093, 1101 n.8 (Pa. 2018) (applying waiver in an application for relief under Rule 123).

The Pennsylvania Appellate Practice treatise reflects these rules:

While recognizing the use of an application for extraordinary relief, [Pa.R.A.P] 3309 does not address form or content. By analogy to petitions for allowance of appeal and petitions for permission to appeal, which serve similar purposes, that is, to invoke discretionary

jurisdiction, the application should allege in an organized fashion, but not necessarily in numbered paragraphs, the basis for the Supreme Court's jurisdiction, a concise statement of the facts of the case, the issue to be reviewed and the justification for seeking special consideration. At minimum, such applications should comply with Pa.R.A.P. 123(a), which requires that the application 'shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought.' **There should be no *separate* supporting brief.**

Pennsylvania Appellate Practice, King's Bench Matters: Rule 3309 Application for Extraordinary Relief, 20A West's Pa. Prac., Appellate Practice § 3309:2 (emphasis added, footnotes omitted).

Thus, the Landlords were required to provide this Court with a comprehensive overview of the factual and legal framework needed to render a decision on their petition. The Landlords should have been aware of their obligation in this regard, given the multitude of emergency petitions already filed with this Court, including *Civil Rights Defense Firm, et al. v. Wolf*, 63 M.M 2020 (Pa.). In that action, the application set forth with clarity and particularity the legal arguments as to the validity of the Executive Order. The Landlords had the same obligation here.

The Commonwealth Officials, per this Court's order, submitted a response with a comprehensive overview of the factual and legal framework needed to render a decision on the petition. Regardless of form, the emergency nature of the Landlords' own filing is inconsistent with ordinary briefing schedules.

The Landlords chose the nature of the extraordinary petition they brought to this Court. The Commonwealth Officials were required to respond to that petition

under very tight time constraints. Having done so, it is inherently unfair to allow the Landlords to respond with serial briefing on their own schedule, particularly where the rules of appellate procedure do not provide for additional briefing.

The Landlords had every opportunity and obligation to present in their petition whatever information was necessary to support it. The Commonwealth Officials respectfully suggest that leave to file a supplemental reply brief be denied.

Respectfully submitted,

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By: */s/ J. Bart DeLone*

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DATE: May 22, 2020

CERTIFICATE OF COUNSEL

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

/s/ J. Bart DeLone

J. BART DeLONE
Chief Deputy Attorney General
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CERTIFICATE OF SERVICE

I, J. Bart DeLone, Chief Deputy Attorney General, do hereby certify that I have this day served the foregoing answer, via electronic service, on the following:

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DATE: May 22, 2020