

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

REDACTED,		: No. 145 MAP 2014
	Appellant	:
v.		:
REDACTED,		:
	Appellees	:
		:
		:

ORDER

PER CURIAM

AND NOW, this 2nd day of March, 2015, the Request for Limited Disclosure is **GRANTED**. The Prothonotary is **DIRECTED** to make available, on a publicly-accessible entry, the present order, as well as the attached redacted version of Appellant's Petition for Permission to Appeal and redacted version of the December 30, 2014 order granting permission to appeal. In all other respects, the previously imposed seal, see order dated 12/30/2014, remains in effect pending further order of this Court.

It is further **ORDERED** that any *amicus curiae* brief, regardless of the position it supports, is due on or before the due date for Appellant's reply brief.

Exhibit 1

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

REDACTED	:	No. 173 MM 2014
	:	
Petitioner	:	
	:	
v.	:	
	:	
REDACTED	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
Respondents	:	
	:	

ORDER

PER CURIAM

AND NOW, this 30th day of December, 2014, the Petition for Permission to Appeal is **GRANTED**. The parties are directed to brief the following issues:

- 1) When counsel for a nonprofit corporation believes that charitable assets are being unlawfully diverted, may counsel disclose this information to the Attorney General's office, as parens patriae for the public to whom the charity and its counsel owe a fiduciary duty?

REDACTED

REDACTED

REDACTED

The Application to File Under Seal is **GRANTED**. The Prothonotary is **DIRECTED** to establish a briefing schedule, with the direction that the matter shall be submitted on the briefs.

Exhibit 2

173 2014

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NOV 10 2014



REDACTED

PETITION FOR PERMISSION TO APPEAL

REDACTED, petitioner in the above matter,

hereby petitions the Court for permission to appeal, for the following reasons:

STATEMENT OF JURISDICTION

This is a petition for permission to appeal from an order of the Commonwealth Court, entered in a matter originally commenced in that Court. The order in question, as amended, states that it involves a controlling question of law as to which there is substantial ground for difference of opinion; and that an

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immediate appeal may materially advance the ultimate termination of this matter.

This Court therefore has jurisdiction pursuant to 42 Pa.C.S. §§ 702(a) and 723(a).

ORDERS IN QUESTION

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REDACTED

REDACTED

REDACTED

STATEMENT OF THE CASE

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REDACTED

CONTROLLING QUESTIONS OF LAW PRESENTED

1. When counsel for a nonprofit corporation believes that charitable assets are being unlawfully diverted, may counsel disclose this information to the

Attorney General's office, as *parens patriae* for the public to whom the charity and its counsel owe a fiduciary duty?

REDACTED

REASONS FOR GRANTING THE PETITION

REDACTED

REDACTED

* * * *

* * * *

1. Disclosure to the Attorney General of wrongdoing by a charity is not prohibited by Rule 1.6. REDACTED is a nonprofit corporation, organized for charitable purposes and tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue

Code, 26 U.S.C. § 501(c)(3). As such, its assets (including the value of its employees' time and services) are imbued with the corporation's charitable purpose. "All property held by a charitable nonprofit ... constitutes property committed to charitable purposes," *In re Roxborough Memorial Hosp.*, 17 Fid.Rep.2d 412, 422-423 (Phila. Orph.Ct. 1997), and is held in trust for the public at large. *Estate of Pruner*, 136 A.2d 107, 109 (Pa. 1957) ("beneficiary of charitable trusts is the general public"); *In re Stroudsburg Real Property*, 23 Fid.Rep.2d 258, 261 (Monroe Orph.Ct. 2003). The rights of the public at large are in turn represented by the Commonwealth as *parens patriae*, and specifically by the Attorney General. "It cannot be questioned that [the] Attorney General, by virtue of her office, is authorized to inquire into the status, activities and functions of public charities." *Comm. v. Barnes Foundation*, 159 A.2d 500, 505 (1960). The Commonwealth, through its Attorney General, thus has the rights of a beneficiary to be informed of REDACTED operations and affairs, *see* 29 Pa.C.S. § 7710(d), on behalf of the ultimate beneficiary, the public at large.

Where private beneficiaries are concerned, the law is clear that an attorney representing a fiduciary has derivative duties to the beneficiary that transcend those that a lawyer normally owes to a client. *See In re Pew Trust*, 16 Fid.Rep.2d 73 (Mont. Orph.Ct. 1995). Thus, a trustee "cannot withhold from any beneficiary any documents regarding the management of the trust, including opinions of counsel,"

Follansbee v. Genlach, 56 Pa.D.&C.4th 483, 491 (All. C.P. 2002), and the attorney-client privilege does not apply. *Id.*, at 488.

We submit that the same analysis should apply to the relationship that exists among a *public* charity, its attorney, and the Attorney General. REDACTED, as a public charity, owed a fiduciary duty to the public; thus, when REDACTED lawyer had reason to believe that the corporation was diverting public charitable resources into private pockets, she was at least permitted, if not obliged, to disclose that information to the Attorney General.

Commonwealth Court, however, declined to apply the private-beneficiary cases to this situation, on the ground that “the interests of the public-at-large are well-represented by the Commonwealth acting in its *parens patriae* capacity.” Op. at 22. But with all due respect to that court, this gets it backward: the Commonwealth’s *parens patriae* interests are precisely why the Attorney General *should* be informed of wrongdoing by a charity, not a reason to keep her in the dark. We submit that, by electing to structure itself as a public charity supported by tax exemptions, REDACTED has foregone any right to have its lawyer hide its activities from the Commonwealth.

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REDACTED

CONCLUSION

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REDACTED

REDACTED

Date: November 10, 2014

CERTIFICATE OF SERVICE

REDACTED

DATE: November 10, 2014

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