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\* Petition to appear *pro hac vice*  
pending

Mary Catherine Roper  
I.D. No. 71107  
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I.D. No. 200885  
**AMERICAN CIVIL LIBERTIES**  
**UNION OF PENNSYLVANIA**  
P.O. Box 60173  
Philadelphia, PA 19102  
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Attorneys for Petitioners

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

**THE PHILADELPHIA  
COMMUNITY BAIL FUND, et. al.,**  
*Petitioners,*

v.

**ARRAIGNMENT COURT  
MAGISTRATE FRANCIS  
BERNARD., et al.,**

*Respondents.*

**No. 21 EM 2019**

**APPLICATION FOR BRIEFING SCHEDULE ON ISSUES  
RAISED BY RESPONDENTS**

Petitioners respectfully request, pursuant to Pa. R.A.P. 3307, that this Court grant petitioners' application for leave to file original process, exercise jurisdiction over the Class Action Complaint and Petition for Writ of Mandamus, and set a schedule for disposition of the issues raised in the Petition and respondents'

response. Pa. R.A.P. 3307(c) (“The Supreme Court may grant or deny the application.... Additional pleadings may be filed, and subsequent proceedings had, as the Supreme Court may direct.”).

1. On March 12, 2019, petitioners filed: (1) an Application for Leave to File Original Process; and (2) a Class Action Complaint and Petition for a Writ of Mandamus.
2. The Rules of Appellate Procedure permit an answer *to the Application* within 14 days. Pa. R.A.P. 3307(b) (“The initial pleading in any original action or proceeding shall be prefaced by an application for leave to file such pleading . . . . An adverse party may file an answer no later than 14 days after service of the application.”).
3. On March 26, 2019, respondents filed a “Response” that did not address the question presented in petitioners’ application for leave to file original process: whether the Petition is properly filed within this Court’s original jurisdiction. Respondents apparently concede that it is. Petitioners’ Application for Leave to File Original Process, therefore, should be granted.
4. The “Response” also did not meet the requirements for an answer to a petition or complaint, in that it did not address each of petitioners’ averments:

Rule 1029. Denials. Effect of Failure to Deny.

(a) A responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth.

Pa. R.C.P. 1029. Respondents did not do this. Instead, their “Response” appears to be in the nature of preliminary objections to the Petition for a Writ of Mandamus, in which respondents argue: (1) that mandamus is an inappropriate vehicle for the relief that petitioners seek (that respondents follow the Rules of Criminal Procedure); (2) that the ability to appeal individual bail decisions to a higher court means that there is no process that can compel respondents to follow the explicit Rules of Criminal Procedure; and (3) that mandamus is an inappropriate vehicle for relief that petitioners have *not* sought in this action (an end to the use of cash bail). *See* Response at 10-17.

5. The Response is premature. The merits of the Petition for a Writ of Mandamus are not ripe for response until this Court accepts jurisdiction, granting petitioners’ Application for Leave to File Original Process.
6. Assuming the Court grants petitioners’ unopposed application for leave to file original process, petitioners seek the opportunity to respond fully to the merits arguments made in the Response, and suggest the most appropriate

procedure for that would be for the Court to treat the Response as the filing of preliminary objections and set a briefing schedule to address those objections. Alternatively, petitioners ask that the Court set a date by which petitioners may file a brief in opposition to the arguments set forth in the Response.

**Relief Sought**

For the above-stated reasons, petitioners move this Court to:

- a. exercise original jurisdiction over this matter;
- b. accept for filing the Class Action Complaint and Petition for a Writ of Mandamus; and
- c. set a briefing schedule for disposition of the preliminary matters raised in the Response filed on March 26, 2019.

Respectfully submitted,

Dated: April 1, 2019

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**CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127**

I hereby certify, pursuant to Pa.R.A.P. 127, 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.

Dated: April 1, 2019

Mary Catherine Roper  
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