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\* Petition to appear *pro hac vice* to be  
filed forthwith

Attorneys for Petitioners  
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**IN THE SUPREME COURT OF PENNSYLVANIA**  
**EASTERN DISTRICT**

**THE PHILADELPHIA**  
**COMMUNITY BAIL FUND**, by and  
through its Trustees, Candace McKinley  
and Lauren Taylor,

**THE YOUTH ART & SELF-**  
**EMPOWERMENT PROJECT**, by  
and through its Trustees, Sarah Morris  
and Joshua Glenn,

**M.W.**, an individual being held on bail  
he cannot afford,

**P.R.**, an individual being held on bail he  
cannot afford,

**G.T.**, an individual being held on bail  
he cannot afford,

**T.J.**, an individual being held on bail he  
cannot afford,

**No.**

**S.T.**, an individual being held on bail he cannot afford,

**D.M.**, an individual being held on bail he cannot afford,

**K.B.**, an individual being held on bail she cannot afford,

**J.H.**, an individual being held on bail he cannot afford, and

**H.J.**, an individual being held on bail he cannot afford,

**Z.L.**, a minor being held on bail he cannot afford, by and through his mother **A.B.**,

*Petitioners,*

v.

**ARRAIGNMENT COURT  
MAGISTRATE FRANCIS  
BERNARD** of the  
COMMONWEALTH OF  
PENNSYLVANIA,

**ARRAIGNMENT COURT  
MAGISTRATE JANE RICE** of the  
COMMONWEALTH OF  
PENNSYLVANIA,

**ARRAIGNMENT COURT  
MAGISTRATE SHELIA BEDFORD**  
of the COMMONWEALTH OF  
PENNSYLVANIA,

**ARRAIGNMENT COURT**

**MAGISTRATE KEVIN DEVLIN** of  
the COMMONWEALTH OF  
PENNSYLVANIA,

**ARRAIGNMENT COURT**  
**MAGISTRATE JAMES O'BRIEN** of  
the COMMONWEALTH OF  
PENNSYLVANIA,

**ARRAIGNMENT COURT**  
**MAGISTRATE ROBERT STACK** of  
the COMMONWEALTH OF  
PENNSYLVANIA,

*Respondents.*

**APPLICATION FOR LEAVE TO FILE ORIGINAL PROCESS**

As a non-ancillary writ of mandamus against judicial officers, this Petition for Writ of Mandamus falls within the Supreme Court of Pennsylvania's original and exclusive jurisdiction. Pa.R.A.P. 3307. For the reasons set forth below and in the accompanying Class Action Complaint and Petition for a Writ of Mandamus, Petitioners the Philadelphia Community Bail Fund, the Youth Art & Self-Empowerment Project, and individual Petitioners M.W., P.R., G.T., T.J., S.T., D.M., K.B., J.H., H.J., and Z.L., hereby file this Application for Leave to File Original Process in the form of the attached Class Action Complaint and Petition for a Writ of Mandamus.

## Nature of the Action

1. This is an action in mandamus to compel Respondents, Arraignment Court Magistrates of the Philadelphia Municipal Court, Francis Bernard, Jane Rice, Shelia Bedford, Kevin Devlin, James O'Brien, and Robert Stack, to follow the mandates of the Pennsylvania Constitution, as well as the Rules of Criminal Procedure promulgated by this Court, when making initial bail determinations for individuals arrested in Philadelphia.

2. To protect defendants' constitutional right to pretrial liberty and to encourage pretrial release, the Rules of Criminal Procedure contain mandatory and unambiguous instructions on how these initial bail determinations must be made and how the accompanying hearings must be conducted.

3. The Rules impose duties on Respondents in mandatory, non-discretionary terms. However, as described in the Class Action Complaint and Petition for a Writ of Mandamus, Respondents ignore these compulsory directives day in and day out.

4. Instead, Respondents conduct cursory hearings which, on average, last approximately two minutes and are largely inaudible to defendants who "appear" by videoconference. At these hearings, Respondents fail to afford defendants a meaningful opportunity to be heard or consult with counsel.

5. Respondents routinely impose monetary bail upon indigent defendants without considering an individual's ability to pay or alternatives to cash bail. In many cases, Respondents impose high monetary bail for the purpose of ensuring that defendants remain incarcerated pending trial. All of these practices are routine, daily occurrences and all of them violate defendants' rights and the Rules of Criminal Procedure.

6. As a result of Respondents' endemic failure to carry out their mandatory duties, thousands of people arrested in Philadelphia who should be released are unjustly deprived of their pretrial liberty when they are assigned unaffordable monetary bail.

7. The Organizational Petitioners are the Philadelphia Community Bail Fund and the Youth Art & Self-Empowerment Project ("YASP").

8. The Philadelphia Community Bail Fund is a volunteer-run organization that posts bail for residents of Philadelphia who cannot afford to do so on their own and provides community supports to the individuals for whom they have posted bail. In addition, the Philadelphia Community Bail Fund advocates for reforms to the use of monetary bail and pretrial detention in Philadelphia.

9. YASP is an organization devoted to ending the practice of trying and incarcerating young people as adults. YASP conducts workshops for young people who are awaiting trial as adults in Philadelphia, works to obtain pretrial release for

these young people, and helps young people find employment and continue their education after being released from the adult system.

10. Respondents' dereliction of their mandatory duties has interfered with the ability of the Philadelphia Community Bail Fund and YASP to carry out their work. Additionally, both organizations have devoted resources to mitigating the harms caused by Respondents' failure to follow the rules and the use of monetary bail in Philadelphia. As such, the Organizational Petitioners have a substantial and particular interest in ensuring that Respondents follow the rules when making decisions about the pretrial liberty of arrestees in Philadelphia.

11. The Individual Petitioners are M.W., P.R., G.T., T.J., S.T., D.M., K.B., J.H., H.J., and Z.L., each of whom was assigned monetary bail during a preliminary arraignment at which Respondents failed to comply with the mandates of the rules. The Individual Petitioners bring this suit on behalf of themselves and all others similarly situated who are or will in the future be subject to Respondents' failure to conduct preliminary arraignments in accordance with the mandates of the rules. The Individual Petitioners have a compelling, personal interest in Respondents complying with the mandates of the rules.

## Jurisdiction

12. This Court has original jurisdiction over this matter. The Supreme Court has “original but not exclusive jurisdiction” of all cases of “[m]andamus or prohibition to courts of inferior jurisdiction.” 42 Pa. C.S. §721(2).

13. Generally, the Commonwealth Court has original jurisdiction over civil actions against “the Commonwealth government, including any officer thereof, acting in his official capacity.” 42 Pa.C.S. § 761(a)(1). However, the Commonwealth Court has original jurisdiction in cases of mandamus to courts of inferior jurisdiction only “where such relief is ancillary to matters within its appellate jurisdiction” 42 Pa.C.S. § 761(c).

14. Therefore, “[e]xclusive jurisdiction over non-ancillary mandamus to courts of inferior jurisdiction lies in the Pennsylvania Supreme Court.”

*Commonwealth ex rel. Stedman v. Duncan*, 147A.3d 57, 62 (Pa. Commw. Ct. 2016) (en banc) (alteration in original) (quoting *Kneller v. Stewart*, 112 A.3d 1269, 1271 (Pa. Commw. Ct. 2015)). This action is not ancillary to any matter within the Commonwealth Court’s appellate jurisdiction.

15. These principles extend to petitions for writs of mandamus directed at judicial officers of courts of inferior jurisdiction, such as Respondents. *See* 42 Pa. C.S. §102 (As used in section 721(2), court “[i]ncludes any one or more of the judges of the court who are authorized by general rule or rule of court, or by law or

usage, to exercise the powers of the court in the name of the court.”); *Kneller*, 112 A.3d at 1271 (“This [Commonwealth] Court, however, does not have jurisdiction to issue mandamus to courts of inferior jurisdiction, including magisterial district judges, except where the mandamus is ancillary to a pending appeal”).

16. This Court, therefore, has exclusive jurisdiction over this petition for a writ of mandamus because Respondents are “deemed to be officers and employees of the judicial branch of the government of the Commonwealth of Pennsylvania.” Phila. M.C.R. Crim. P., A.C.M., Sec. 1.02.

### **Relief Sought**

17. For the above-stated reasons, Petitioners move this Court to:
- a. exercise original jurisdiction over this matter;
  - b. accept for filing the attached Class Action Complaint and Petition for a Writ of Mandamus;
  - c. set a date for a hearing on any allegation in the Class Action Complaint and Petition for a Writ of Mandamus that Respondents contest; and
  - d. grant the requested relief and such other relief deemed appropriate by the Court.

Respectfully submitted,

Dated: March 12, 2019



Mary Catherine Roper

I.D. No. 71107

Nyssa Taylor

I.D. No. 200885

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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: March 12, 2019

  
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Mary Catherine Roper