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LEE A. SOLTYSIAK
CHIEF OPERATING OFFICER

February 20, 2020

Dean Beer
Chief Public Defender
Montgomery County

Dear Dean:

I'm writing this letter in response to your February 13th, 2020 letter requesting clarification of your role as the Chief Public Defender of Montgomery County. There is no question that your intentions in regards to providing quality representation to clients are genuine. Moreover, the administration has been supportive of many of the positions you have taken with respect to overall justice reform. However, in my role as COO, I have been very disappointed in the manner in which you have sought to advance those positions on a number of occasions.

For example, in August 2019, I met with you regarding your improper use of County legal interns from your office for a project that was outside the scope of your job as Montgomery County Public Defender. Specifically, you and Chief Deputy Keisha Hudson directed summer legal interns at the County to use County resources to research social media posts of police officers in several different municipalities for the purpose of providing information to the Philly Voice.

The County Employee Handbook prohibits use of County equipment and staff for anything other than official County business unless the use is "de minimus." The news article that was ultimately published by the Philly Voice concerning the results of the research stated that a team of researchers was assigned "to scour social media posts from as many officers in Montgomery County's 51 municipal police departments as they could find."

Clearly this project did not involve a "de minimus" use of County equipment and staff. Further, it was outside the scope of what you and those in your office are tasked to do, as the research was not related to any cases being handled by your office. Rather, it was intended to mirror similar research done by the Plain View Project after the Plain View Project declined to undertake the research in Montgomery County. Your use of County equipment and staff for this outside project also violated the County Ethics Policy.

Moreover, while you were working on this project that was certain to draw public attention, you failed to communicate with me. It was only after you had provided all of the background information to the press did you contact me to give me a "heads up" that a reporter had reached out to you for a comment. While I am supportive of the goals you were attempting to achieve with this project, I cannot condone the process you employed in gathering the information. Coordination and earlier communication with me and others in County Administration could have resulted in a process that would have been more appropriate and beneficial in achieving the goal you were trying

to advance. The course of action you chose to take most likely undermined your efforts to shed light on an important issue.

In January, you raised questions about the phone rates of GTL at the Youth Center. Again, rather than bringing those concerns directly to me, your office filed a Right to Know request to obtain a list of all calls placed by juvenile residents for the preceding year. Fortunately because of the sizeable information sought, the request was brought to the attention of County Solicitor, Josh Stein. Josh immediately contacted you to discuss the basis for the request and only then did you express the concern that the phone rates at the Youth Center were too high. Within hours after Josh contacted you about the Right to Know request, he addressed the issue and confirmed with GTL that thereafter the phone rates at the Youth Center would be the same as the rates for County Prison.

Once more, if you had brought this to my attention when you first became aware of the issue more than a month earlier, it could have been addressed much sooner and in a more appropriate and less adversarial fashion. However, you seem determined to work against County administration instead of along with it.

The situation with the recent filing of a brief in the ACLU cash bail case before the Pennsylvania Supreme Court is very similar. You know that the administration is in favor of the reform sought in the case and in fact, you are aware that changes to the pre-trial process in Montgomery County have been budgeted for and are being pursued. In an effort to advance this issue state-wide, you put at risk the collaborative efforts of your office, the Courts, the District Attorney, and County Administration to bring about a positive change in bail practices for your clients in Montgomery County.

Rather than alerting me in December that the ACLU had requested you file an amicus brief, you waited until February to forward a brief to Josh and I that was filed before we were afforded any time for meaningful comment. All briefs in the case, including amicus briefs, had been due to be filed with the Supreme Court no later than January 30, 2020. Therefore, there was no time constraint for filing the brief which was filed Nunc Pro Tunc. Even though you were not required to file the brief on February 3rd, you filed it before Josh or I had an opportunity to review and provide comments. The fact that you forwarded the brief prior to filing, and then subsequently filed without waiting for feedback indicates to me that you were well aware, not only that comments would be forthcoming, but that there was a strong chance those comments would include a request to amend or refrain from filing the brief at all.

To be clear, the President Judge has not influenced my evaluation of your performance. I expect, as I do with all Department Heads, that the Chief Public Defender show good judgment and follow the policies of the County in performance of duties. There is no question that you do not report to the Courts or require the approval of Courts for anything you are responsible for, and nothing of the sort has been said or implied. However, the ability to work collaboratively wherever possible with other groups on clearly common goals would undoubtedly be more effective.

As the Public Defender of Montgomery County, you are appointed by the County Commissioners, and tasked under the Pennsylvania Public Defender Act with furnishing legal counsel to any person who, for lack of sufficient funds, is unable to obtain it. Your function as it pertains to that mandate

is where a minimal amount of oversight is necessary. You, and your staff, are zealous advocates for those you are tasked with defending, and your work in that regard is appreciated beyond measure.

It is when you choose to act outside of that scope that your conduct has proven to be as frustrating as it is puzzling. I would have welcomed, and quite frankly expected, the opportunity to work with you and your office on these issues on the front end when we could develop an appropriate strategy to make progress on these important matters. I am certain we would have worked together to develop a plan focused on how best to accomplish the goals. Instead, you have chosen to go-it-alone and repeatedly ignore county policy along with the advice given by me and others on numerous occasions which has undermined the very issues you are advocating for each and every time.

The ability of the Public Defender to function independently in the representation of indigent clients in Montgomery County is important. What is also important is the ability of the head of that department to realize the broader implications of acting on certain desired reforms in a manner that is outside the intended scope of the position. Your repeated inability to realize when it is both beneficial and appropriate to engage with me, the Commissioners, or the Solicitor before taking a particular action is deeply concerning.

You have requested clarification on your role as the Chief Public Defender for Montgomery County. The fact that you have been in your position for almost four years, have demonstrated numerous instances of questionable judgment, and just now seek a review of your position demonstrates the concerns that I have in your work for Montgomery County.



Lee A. Soltysiak
Chief Operating Officer
Montgomery County