

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between the York Daily Record, The York Dispatch, The Philadelphia Inquirer d/b/a Spotlight PA, LNP Media Group, Inc., and WITF (collectively, “Plaintiffs”), on the one hand, and Daniel J. Byrnes, York County Clerk of Courts, in his official capacity (“Defendant”), on the other hand (collectively, the “Parties”), to resolve the matter of *York Daily Record et al. v. Daniel J. Byrnes*, 22-cv-361-SHR, currently pending in the U.S. District Court for the Middle District of Pennsylvania (filed Mar. 11, 2022) (hereinafter, the “Litigation”).

### RECITALS

**WHEREAS**, in the Litigation, Plaintiffs allege that Defendant’s policies and practices relating to public access to judicial records maintained by Defendant’s office violate Plaintiffs’ state and federally protected constitutional rights pursuant to 42 U.S.C. § 1983. Specifically, Plaintiffs allege that Defendant’s policy and/or practice of redacting non-confidential information from judicial records, delaying press and public access to judicial records, and denying press and public access to judicial records, including by “impounding” judicial records, violates Plaintiffs’ rights under the constitutions of the United States and the Commonwealth of Pennsylvania;

**WHEREAS**, Defendant maintains that his practices, including redacting and “impounding” judicial records is in accordance with Pennsylvania law and maintains the appropriate balance between protecting confidential information and providing the public and press timely access to judicial records;

**WHEREAS**, the Parties have worked collaboratively to ensure that the public has as much access to judicial records as is permissible and required under state and federal law,

recognizing that that under the Pennsylvania Law and the First Amendment the general public and the press have equal rights to access information;

**WHEREAS**, the Parties have jointly concluded through their cooperation during settlement negotiations that this Settlement Agreement is a fair, equitable, reasonable, and adequate resolution of the disputes raised in the Litigation;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, intending to be legally bound hereby, the Parties agree as follows:

### **UNDERTAKINGS**

1. Plaintiffs have requested and Defendant has agreed that, within thirty (30) days of the ratification of this Settlement Agreement, Defendant shall provide Plaintiffs with a copy of a written policy notifying the public how to obtain access to judicial records maintained by the York County Clerk of Court's Office (hereinafter the "Public Records Policy").

a. The Public Records Policy shall specify the methods by which the public may currently request access to judicial records, including, but not limited to, in person and via email, and list Defendant's appropriate email address(es) for such requests.

b. The Public Records Policy shall set forth Defendant's fee schedule for providing copies of judicial records to the public aligned with the UJS Public Access Policy Recommendations, which currently permit setting a rate of no higher than \$0.25 per page for printed documents. The current fee schedule shall also provide for free, no-cost access to judicial records provided via email or records viewed at the Clerk of Courts office.

c. The Public Records Policy, along with the chart described in Paragraph 2(g) and contained in **Exhibit A** hereto, "Limits on Public Access to Judicial Records Maintained by the York County Clerk of Courts," shall be prominently displayed in an area

accessible to the public at the Clerk of Courts office and posted on the Clerk of Courts website.

2. Defendant shall, within thirty (30) days of the ratification of this Settlement Agreement, adopt an internal written policy confirming how the Office of the York County Clerk of Courts shall respond to requests for public access to judicial records maintained by Defendant's office (hereinafter "Internal Records Policy"), and provide Plaintiffs with a copy of the Internal Records Policy which shall contain the following terms:

a. Plaintiff and Defendant agree that the Office of the York County Clerk of Courts shall limit access to protected information in conformity with the UJS Policy's Section 7.0, Confidential Information, Section 9.0, Limits on Public Access to Case Records at a Court Facility, and shall follow Section 12.0, Continuous Availability of Policy.

b. Plaintiff and Defendant agree that neither the UJS Policy Section 10.0, Limits on Remote Access to Case Records, nor the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* (the "Electronic UJS Policy") shall apply to the judicial records provided by Defendant's office in response to public access requests made in person and via email and Defendant shall not redact requested judicial records pursuant to Section 10.0 or the Electronic UJS Policy in response to those in person or email requests.

c. Plaintiffs and Defendant agree that Defendant must redact criminal charges pursuant to the Clean Slate Act, 18 Pa. C.S. § 9122.2 *et seq.*, if such charges have been officially designated as subject to Clean Slate limited access in the Common Pleas Case Management System ("CPCMS"). If a charge has not been designated as subject to Clean Slate limited access in CPCMS, Plaintiffs and Defendant agree that Defendant shall not

redact that charge pursuant to the Clean Slate Act. In instances where a judicial record relates to a case involving multiple criminal charges, only information related to the criminal charges designated as subject to Clean Slate limited access may be redacted pursuant to the Clean Slate Act.

d. Plaintiffs and Defendant agree that the chart contained in **Exhibit A** hereto, “Limits on Public Access to Judicial Records Maintained by the York County Clerk of Courts” sets forth categories of information to which public access is, and is not, restricted by applicable laws and state court rules. If a judicial record or information contained therein is not specifically restricted under an applicable law, court order, or state court rule, the public is entitled to access and the Clerk of Courts shall not deny or restrict public access.

e. Plaintiffs and Defendant agree that information revealing the names of minors who are victims of physical or sexual abuse is protected and confidential information pursuant to 42 Pa. C.S. § 5988, and that the names and identities of victims of human trafficking are protected and confidential information pursuant to 18 Pa. C.S. § 3019(a). Defendant identifies cases involving these victims by designating them as “impounded.” Plaintiffs and Defendant agree that the Defendant shall continue to protect victims’ names and identities in such cases as required by law. Whenever a request is made for documents from an impounded case, if the document reveals the name of the victim—including specific information that makes the name readily apparent—such information will be redacted prior to the document being provided. Documents which do not contain identifying information, such as scheduling orders, will be provided and will not contain redactions. Access to records affected by 42 Pa. C.S. § 5988 or 18 Pa. C.S. § 3019(a),

like all records, will be provided as promptly as possible under the circumstances, with any redactions narrowly tailored to be consistent with the constitutional and common law presumption of access to judicial records.

f. Defendant shall respond to requests for public access to judicial records as promptly as possible under the circumstances. The Office of the York County Clerk of Courts will make all reasonable attempts to respond to requests on the same business day on which the request is made, and when not practicable, on the next business day, excepting inconsequential deviations and extraordinary circumstances which may delay access.

3. Defendant agrees that within thirty (30) days of the ratification of this Agreement, all employees of the York County Clerk of Courts' office who are involved in any capacity in responding to requests for public access to judicial records, including but not limited to employees working at the front counter of the office, shall receive training on the Public Records Policy and the Internal Records Policy referenced herein at Paragraphs 1 through 2, as well as **Exhibit A** hereto.

4. Plaintiffs acknowledge and agree that the Office of the York County Clerk of Court, as custodian of these records, has a duty and obligation to comply with the Laws of Pennsylvania, and that when those Laws call for certain information to be redacted, the Office of the York County Clerk of Court has a legal and ethical duty to comply with those Laws.

5. **Training for Newsrooms.** Counsel for Plaintiffs shall, within thirty (30) days of the ratification of this Settlement Agreement, conduct a training for all Plaintiff newsroom employees who are involved in any capacity in making requests for access to judicial records. Defendant shall attend the training. The training shall address the following subjects:

- a. Access to judicial records under the UJS Policy, including training on which categories of information and documents are deemed confidential.
- b. Access to judicial records under the Clean Slate Act, including training on when charges are designated as limited access and may not be released to the public.
- c. Access to judicial records in cases involving minor victims of physical or sexual abuse pursuant to 42 Pa. C.S. § 5988 and victims of human trafficking pursuant to 18 Pa. C.S. § 3019(a), including training on the prohibition on releasing the victims' names.
- d. Policies on requesting access to judicial records from Defendant's office, including that records may be requested by email or in person; that Defendant's office will redact records to comply with confidentiality provisions set by state and federal law and court orders; that Defendant's office will make all reasonable attempts to respond to requests on the same business day on which the request is made, and when not practicable, on the next business day; and that Defendant will charge \$0.25 per page for printed documents but will not charge for viewing or emailing documents.
- e. Plaintiffs shall also be instructed to continue to follow their internal newsroom policies regarding journalistic ethics.
- f. Defendant shall attend the training of the newsroom employees and shall be invited to comment and answer questions.

6. Plaintiffs and Defendant agree that upon the mutual undertakings herein,

Plaintiffs shall within seven (7) days thereafter, file with the Court a joint stipulation of dismissal

and proposed order substantially in the form annexed hereto as **Exhibit B**, informing the Court that the Parties have resolved the Litigation and requesting that the Court enter an order dismissing the claims with prejudice and retaining jurisdiction for sixty (60) days for the sole purpose of enforcing the Settlement Agreement.

### **REPRESENTATIONS AND WARRANTIES**

7. The Parties each represent and warrant that they are fully authorized to enter into this Settlement Agreement. Each individual executing this Settlement Agreement represents that they have taken all necessary corporate and internal actions to duly approve the making and performance of this Settlement Agreement on behalf of the party the individual represents, that they have the authority to enter into this Settlement Agreement on behalf of such party, and to bind such party, and that no further corporate or other internal approval is necessary.

8. The Parties each represent and warrant that they have had an opportunity to consult with counsel of their choice prior to entering into this Settlement Agreement; that they have read and familiarized themselves with the entire Agreement with the advice and assistance of counsel; and that they authorize the signing of this Settlement Agreement of their own free will intending to be permanently bound by its terms and provisions. The Parties each further declare that no promise or representation has been made to them or to anyone acting for them except as expressly stated herein; that in entering into this Settlement Agreement, they have relied upon their judgment and the advice of their counsel; and that they fully understand that this Settlement Agreement evidences and acknowledges full, final, and complete resolution of the claims brought in this Litigation.

### **MISCELLANEOUS TERMS AND CONDITIONS**

9. **No Admissions** – This Settlement Agreement is not, and shall not be an

admission or concession by any party, except as expressly provided herein. Nor shall this Settlement Agreement operate as a waiver of any rights or defenses that any party may have, except as expressly provided herein. This Settlement Agreement is made as a compromise of a dispute to avoid further expense and to resolve the subject controversy.

10. **Not Evidentiary** – No part of the Parties’ settlement discussions or of this Settlement Agreement may be used in any proceeding as evidence of the respective rights, duties, or obligations of any of the Parties, provided, however, that this Settlement Agreement shall be admissible in any proceeding in connection with or related to the interpretation, validity, enforcement, or breach of this Settlement Agreement.

11. **Construction** – The language of this Settlement Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any party hereto. This Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement, and neither a party nor its respective attorneys shall urge otherwise.

12. **Costs** – Each Party is to bear its own attorneys’ fees arising from the actions of its own counsel in connection with the Litigation and Settlement Agreement, and all other matters and documents referred to herein. Defendant shall pay, within thirty days, the sum of \$6,796.52, representing costs and expenses incurred by the Reporters Committee for Freedom of the Press. The amount is payable to the Reporters Committee for Freedom of the Press, 1156 15th St. NW, Suite 1020, Washington, D.C. 20005.

13. **Entire Agreement** – This Settlement Agreement constitutes the entire agreement between the Parties concerning the subject matter herein.

14. **Amendments** – No amendments or variations of the terms of this Settlement Agreement shall be valid unless made in writing and signed by all Parties.



15. **Governing Law** – This Settlement Agreement and all matters relating or pertaining hereto shall be governed and construed by and under the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of law.

16. **Counterparts** – This Settlement Agreement may be executed in counterparts and, if so executed, the various counterparts should be and constitute one and the same instrument.

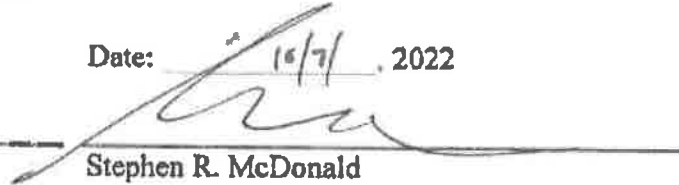
**IN WITNESS WHEREOF, THIS SETTLEMENT AGREEMENT HAS BEEN READ AND SIGNED IN DUPLICATE ORIGINALS BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES:**

Date: 9/29, 2022



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