

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

IN RE:

**JOINT APPLICATION OF THE
LAKE COUNTY PROSECUTING ATTORNEY
AND THE LAKE COUNTY BOARD OF
COMMISSIONERS, PURSUANT TO
R.C. 305.14(A), TO EMPLOY LEGAL
COUNSEL TO ADVISE AND REPRESENT
LAKE COUNTY CLERK OF COURTS,
FAITH ANDREWS**

)
)
)
)
)
)
)
)
)
)
)
)

ORDER

{¶ 1} This matter came on for hearing upon the Joint Application of the Lake County Prosecuting Attorney and the Lake County Board of Commissioners (“Board”), pursuant to R.C. 305.14(A), to employ the law firm of Porter, Wright, Morris & Arthur LLP and Edmund W. Searby, Esq., as lead counsel, including partner co-counsel and associate counsel, as legal counsel to advise and represent Lake County Clerk of Courts, Faith Andrews (“Clerk of Courts”), “regarding any disputes arising between the Clerk of Courts and the judges of the General Division or Domestic Relations Division of the Lake County Common Pleas Court concerning the conduct of the Clerk of Courts and operations of the Clerk’s Office.” The court finds that the interests of justice and the public interest would be served by granting said application, as qualified below.

{¶ 2} The court agrees that, as the Lake County Prosecuting Attorney represents all public officials in the county, including the clerk of courts, county commissioners, and common pleas judges, he has a conflict of interest and cannot represent anyone with regard to any dispute involving the judges, the clerk of courts, and the clerk of courts’ conduct in managing the clerk’s employees. The court agrees that the clerk of courts, the county commissioners, and the common pleas judges all require their own legal counsel with regard to any such dispute.

{¶ 3} To that extent, the court will grant the Board and the Lake County Prosecuting Attorney authority to employ the law firm of Porter, Wright, Morris & Arthur LLP, including Edmund Searby, Esq. and Kevin Kelly, Esq., as lead counsel and partner co-counsel, respectively, to advise and represent Faith Andrews regarding any disputes

arising between Faith Andrews and the court concerning her conduct and the operations of the clerk of courts' office.

{¶ 4} The Board has determined, by resolution dated April 7, 2022, that it will pay counsel so employed at the following rates: lead counsel, \$450.00 per hour, partner co-counsel, \$400.00 per hour, and associate counsel, \$250.00 per hour, without limitation on the number of hours or the total amount of fees for the engagement. The court, by granting the authority to employ counsel, does not concede that the amount of compensation is reasonable, necessary, or appropriate.

{¶ 5} The judges have turned over the matter of the clerk's conduct and the prospect of litigation by the clerk's employees, and the judges' ethical obligations implicated by it all, to the judges' insurance carrier. The judges are represented by counsel retained by the insurance carrier, namely, Kimberly Vanover Riley, Esq. and Linda L. Woeber, Esq., of Montgomery Jonson LLP, to handle the defense of the judges of all aspects of the controversy, including a defense of any action brought by Ohio Disciplinary Counsel for a dereliction of duty.

{¶ 6} The Board has yet to employ, or request approval to employ, their own counsel.

{¶ 7} The court has many concerns with the application for employment of counsel, in terms of the scope of the stated engagement, namely, to advise and represent Faith Andrews regarding any disputes arising between Faith Andrews and the court concerning her conduct and the operations of the clerk of courts' office, as well as other matters. The court believes it is prudent to articulate these concerns in granting the joint application to employ counsel.

SCOPE OF REPRESENTATION FAILS TO ADDRESS THE ISSUE AT HAND

{¶ 8} Lake County is on notice by counsel representing the employees of the clerk of courts to preserve evidence, including video and audio recordings, e-mails, text messages, and documents, for discovery and use in any claims by the clerk's employees against any potential defendants, whether county offices or individual officials. Potential defendants are the clerk of courts, county commissioners, and the common pleas judges. If the clerk is named a defendant in a lawsuit, so likely will be the county commissioners

and the common pleas judges. In such eventuality, the judges would cross-claim against the clerk of courts and the county commissioners.

{¶ 9} The judges have no way of knowing whether the clerk of courts, county commissioners, and prosecuting attorney, and the Porter Wright counsel for the clerk of courts understand that any representation of the clerk under these circumstances is within the scope of the engagement. The court has not seen any engagement letter or contract, and the county commissioners could not have seen any engagement letter or contract before they voted to approve the employment of counsel. The prosecuting attorney stated at the April 7, 2022 commissioners' meeting that he retains the duty and authority to represent the clerk of courts with regard to all other matters, including matters of human resources within the clerk's office.

{¶ 10} The entire controversy between the judges and the clerk *is* the matter of human resources within the clerk's office - along with the clerk's personality. A letter from counsel for employees of the clerk on March 2, 2022, putting the county on notice to preserve evidence for potential litigation immediately preceded the draft journal entry of March 3, 2022.

{¶ 11} Attorney Searby spoke at the commissioners' meeting of April 7, 2022 and stated that he would hope to settle the matter of his client with the judges. The clerk of courts appears to have cast this situation to her counsel as a dispute between the clerk of courts and the judges. That is not the controversy. The dispute is actually one between the clerk and her employees, which is a human resources issue. The controversy with the judges is that the clerk uses profane and vulgar language in a public office under the auspices of the court, and her indignity, discourtesy, and disrespectful manner brings disrepute upon the court and damages public confidence in the institution of the court. Mr. Searby cannot settle with the judges any controversy with the clerk because any settlement must be between the clerk and her employees – if that is settled, the judges will be fine with it, so long as the clerk ceases and desists in her profane and vulgar language and treats everyone with respect, dignity, and courtesy.

{¶ 12} Assuming for arguments sake, that the clerk withdraws her previous voluntary assent to the direction of the judges as set forth in the draft journal entry, and if the judges do not journalize it as the order of the court, the entire matter pending between

the judges and the clerk vanishes, but the same dispute remains, as it has always been, a dispute between the clerk and her employees alleging a hostile work environment, such that the deputy clerks have told the judges they will not be able or willing to perform the function of the clerk's office.

{¶ 13} Simply put, the clerk's employees told the judges that all, or a substantial portion, of the deputy clerks of court cannot function or will not work under this clerk of courts because of her personality and how she treats the employees, to the point of chaos and dysfunction. The clerk of courts is not, and has not been, patient, dignified, or courteous to litigants, court staff, court officials, others with whom the judges/court deal in an official capacity, and others who work or visit in the courthouse. The clerk has acted to damage or threaten the integrity, operational continuity, and public confidence in the justice system because of her personality and management style, which she has assured her staff will not change. The judges stepped in to protect the clerk's employees from the clerk and to ensure the integrity, operational continuity, and public confidence in the court, as is required by their constitutional oath of office and the code of judicial conduct.

{¶ 14} The Code of Judicial Conduct obligates judges to act at all times in a manner that *promotes public confidence in the independence, integrity, and impartiality of the judiciary*. Jud. Cond. Rules 1.2. Judges may not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, *and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so*. Jud. Cond. Rules 2.3(B). *Judges shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations* under the judicial code. A judge is responsible not only for his or her own conduct, but for the conduct of others when those persons are acting at the judge's direction or control. Jud. Cond. Rules 2.12(A). Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and *shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control*. Jud. Cond. Rules 2.8(B). Accordingly, the judges are

obligated by law to require that the conduct of the clerk of courts promotes public confidence in the judiciary, does not manifest bias, prejudice, or harassment based upon, among other things, sex, gender, age, or sexual orientation, and that she be patient, dignified, and courteous to everyone in the courthouse or with whom the judges deal in an official capacity. And, in all of the foregoing, the judges may not be swayed by public clamor or fear of criticism, or permit political or other interests or relationships to influence the judge's judicial conduct or judgment. Jud. Cond. Rules 2.4 (A) and (B). When the law obligates a judge to require or order persons subject to their direction and control to do something, which the person then refuses to do, the judge must have the inherent authority to enforce the order.

{¶ 15} The judges' action against the clerk of courts has protected the clerk of courts and the Board from litigation filed by the employees of the clerk of courts – if the judges did not take such action against the clerk, the employees of the clerk would likely file a lawsuit against the clerk, county commissioners, and judges, and/or engage in mass resignations, imperiling the operational continuity of the court and public confidence in the justice system.

THE SELECTION OF APPROPRIATE COUNSEL FOR THE TASK

{¶ 16} Has the attorney been vetted by the clerk, the prosecutor, or the county commissioners? Just because the attorney is an adjunct professor at Cleveland-Marshall College of Law, a partner at Porter Wright, and has an “excellent reputation in the area of federal criminal investigations and prosecutions and SEC enforcement actions” and white collar crime does not necessarily mean that Attorney Searby is experienced in the realm of human resources and employment law, which is the issue between the clerk and her staff that brought on the involvement of the judges.

{¶ 17} In addition, the hourly rate of compensation agreed to by the Board seems excessive, considering the non-complexity of the issue. If the judges do not enforce any order restricting the clerk's ability to maintain a hostile work environment for her employees, the reason for the employment of this counsel for this task is eliminated.

{¶ 18} Also, there is no limitation on the number of hours, or the total fees to be incurred, and this appears to the court to be an enormous blank check. We have not seen any engagement agreement: will two attorneys attend to every matter, thus doubling the

fees incurred. For example, there are likely 100 or more witnesses. It is common for attorneys to depose all or most witnesses in advance of a hearing. Will two attorneys attend and prepare for each deposition? This does not appear to have been explored before the Board committed to pay the fees of the clerk's counsel.

{¶ 19} Moreover, is the representation to prosecute claims, counterclaims, cross-claims, or third party claims brought about by the clerk's conduct, or to also defend against claims, counterclaims, cross-claims, or third party claims by the judges, commissioners, employees of the legal division, employees of the title division, the registrar of motor vehicles, the Ohio Attorney General, or issues involving Ohio Disciplinary Counsel? Will the representation defend against a removal complaint signed by 14,271 electors? These will all likely be implicated if the judges withdraw any order along the lines of the draft journal entry, and the clerk's employees launch litigation. If the continuity of operations of the court are disrupted by the clerk of courts' employees, Ohio Disciplinary Counsel may become involved by filing dereliction of duty charges against the judges. Will Porter Wight also represent the county commissioners, as their interest seems to be aligned with the clerk, or will they be represented by separate counsel?

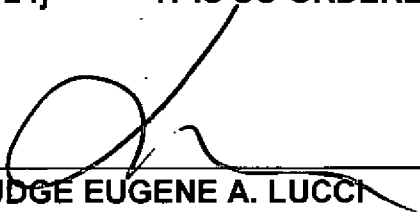
{¶ 20} The definition of the scope of engagement may have missed the mark, as stated in the section above, so what inquiry was made of counsel of his ability and willingness to conduct the representation of the clerk, and also the interplay or cooperation as co-counsel with the prosecuting attorney, who stated he would be representing the clerk on matters of human resources?

{¶ 21} The court would like to know if the defense of the clerk of courts and/or county commissioners was tendered to CORSA, the property and liability risk sharing pool established by the County Commissioners Association of Ohio, to which Lake County is a member. If so, did CORSA decline coverage for the defense of the clerk or commissioners before the clerk endeavored to engage counsel at great expense to the taxpayers of Lake County?

{¶ 22} The foregoing are all issues that the court believes should have been explored by the clerk and the commissioners with proposed counsel, and the prosecuting attorney, prior to simply signing a resolution presented to the Board and passed without much public deliberation.

{¶ 23} IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Board of County Commissioners is granted the authority to employ the law firm of Porter, Wright, Morris & Arthur LLP, as set forth herein, as legal counsel to Lake County Clerk of Courts, Faith Andrews, and will be compensated in an amount and manner determined by the Board of County Commissioners and paid by the Board from the county treasury.

{¶ 24} IT IS SO ORDERED.



JUDGE EUGENE A. LUCCI
Administrative Judge



JUDGE JOHN P. O'DONNELL
Presiding Judge

Copies: Board of County Commissioners, Lake County, Ohio
Prosecuting Attorney, Lake County, Ohio
Faith Andrews, Clerk of Courts, Lake County, Ohio
Edmund W. Searby, Esq., Porter, Wright, Morris & Arthur LLP
Judges of the Common Pleas Court, Lake County, Ohio
Kimberly Vanover Riley, Esq., Montgomery Jonson LLP