Justin J. McShane
Attorney ID No. 87919
Michael Antonio Giaramita Jr.
Attorney ID No. 319299
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

U.S. LAW SHIELD OF PENNSYLVANIA, LLC, EX REL. TODD HOOVER; JUSTIN J. MCSHANE, AN INDIVIDUAL	:	NO.: 2015-CV-255-EQ
PLAINTIFFS	:	CIVIL ACTION EQUITY
V.	:	PLAINTIFFS' ANSWER TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL AND LAW FIRM AND BRIEF IN SUPPORT
CITY OF HARRISBURG; MAYOR ERIC PAPENFUSE; WANDA WILLIAMS, SANDRA REID, BRAD KOPLINSKI, BEN ALATT, JEFF BALTIMORE, SUSAN WILSON, SHAMAINE DANIELS, HARRISBURG CITY COUNCIL MEMBERS; AND THOMAS CARTER, CITY OF HARRISBURG CHIEF OF POLICE	:	JUDGE DOWLING
DEFENDANTS	:	

PLAINTIFFS' ANSWER TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL AND LAW FIRM AND BRIEF IN SUPPORT

AND NOW come Plaintiff U.S. Law Shield of Pennsylvania, LLC *ex rel.* Todd Hoover ("Plaintiff U.S. Law Shield), and Plaintiff Justin McShane (collectively "Plaintiffs"), by and through their attorneys of record Justin J. McShane and Michael Antonio Giaramita Jr. of *The McShane Firm, LLC*, and respectfully request this Court deny Defendants' Motion To Disqualify Plaintiffs' Counsel And Law Firm, and in support thereof state as follows:

1. Admitted.
2. Denied for reasons set forth in Plaintiff's brief in support. Plaintiffs deny the unsubstantiated opinion that McShane's representation is "clearly improper," that testimony "in this case" would be improper, or that McShane will have to testify at all.
3. Admitted that the Local Rules allow emergency motions. Plaintiff is without sufficient information to admit or deny Defendants' purpose for the emergency motion.
4. Admitted that Plaintiffs filed a Motion for Preliminary Injunction in this action on January 30, 2015. Plaintiffs are without sufficient information to admit or deny the whereabouts of Defendants' counsel at that time.
5. Admitted that Plaintiffs oppose Defendants' Motion To Disqualify Plaintiffs' Counsel And Law Firm.
6. Admitted that the text of Pa.R.P.C. 3.7(a) reads as alleged in Defendants' Motion To Disqualify Plaintiffs' Counsel And Law Firm.
7. Plaintiffs deny the relevance of the exceptions. The rule is inapplicable to McShane under the facts and circumstances, as set forth in Plaintiffs' brief in support. Admitted that Defendants vigorously contest McShane's interests at stake, but deny the merits of

Defendants' contention. Plaintiffs deny the unsubstantiated opinion that Defendants' ordinances are "reasonable" and the relevance thereof.

8. Denied. For reasons set forth in Plaintiffs' brief in support, Pa.R.P.C. 3.7(a) does not apply to McShane under the facts and circumstances. There is no evidence that Plaintiff McShane will testify at any point throughout these proceedings. Plaintiffs are unable to predict the substance of McShane's testimony if he were to testify at all.

9. Denied. Plaintiff U.S. Law Shield of Pennsylvania would suffer substantial hardship in efforts to retain counsel as effective as McShane. Admitted only that Defendants filed a Motion to Stay in the matter at hand.

10. Admitted that the first Comment of Pa.R.P.C. 3.7 reads as alleged in Defendants' Motion To Disqualify Plaintiffs' Counsel And Law Firm.

11. Denied that the first Comment of Pa.R.P.C. 3.7 is applicable in the matter at hand for reasons set forth in Plaintiffs' brief in support. Denied that McShane's advocacy and testimony will ever overlap or create confusion.

12. Admitted that Defendants are unaware of any Pennsylvania authority on the matter. Admitted that the Court may view lower federal court holdings as persuasive authority.

13. Plaintiffs deny the relevance and applicability of the persuasive authority cited by Defendants for reasons set forth in their brief in support.

14. Plaintiffs deny the relevance and applicability of the persuasive authority cited by Defendants for reasons set forth in their brief in support.

15. Admitted that McShane can represent himself *pro se*. The remainder is denied for reasons set forth in Plaintiffs' brief in support.

16. Denied for reasons set forth in Plaintiffs' brief in support.

17. Admitted that Defendants are unaware of any Pennsylvania authority on the matter. Admitted that the Court may view lower federal court holdings as persuasive authority. Plaintiffs deny the relevance and applicability of the persuasive authority cited by Defendants for reasons set forth in their brief in support.

18. Denied for reasons set forth in Plaintiffs' brief in support.

19. Plaintiffs' deny that the irrelevant hearsay set forth in Paragraph 19 appropriately characterize McShane's "allegiances" in any fashion.

20. Plaintiffs' deny that the irrelevant hearsay set forth in Paragraph 20 appropriately characterize McShane's "desires" in any fashion or serve as evidence of any potential conflict.

21. Denied for reasons set forth in Plaintiffs' brief in support.

22. Paragraph 22 requires neither an admission nor a denial.

23. Paragraph 23 requires neither an admission nor a denial.

Respectfully submitted,

THE MCSHANE FIRM, LLC

Date: 2/9/15

Justin J. McShane
Attorney ID No. 87919
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Date: 2/9/2015

Michael Antonio Giaramita Jr.
Attorney ID No. 319299
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Attorneys for Plaintiffs

Justin J. McShane
Attorney ID No. 87919
Michael Antonio Giaramita Jr.
Attorney ID No. 319299
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

U.S. LAW SHIELD OF PENNSYLVANIA, LLC, EX REL. TODD HOOVER; JUSTIN J. MCSHANE, AN INDIVIDUAL	:	NO.: 2015-CV-255-EQ
PLAINTIFFS	:	CIVIL ACTION EQUITY
V.	:	PLAINTIFFS' BRIEF IN SUPPORT OF ANSWER TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL AND LAW FIRM
CITY OF HARRISBURG; MAYOR ERIC PAPENFUSE; WANDA WILLIAMS, SANDRA REID, BRAD KOPLINSKI, BEN ALATT, JEFF BALTIMORE, SUSAN WILSON, SHAMAINE DANIELS, HARRISBURG CITY COUNCIL MEMBERS; AND THOMAS CARTER, CITY OF HARRISBURG CHIEF OF POLICE	:	JUDGE DOWLING
DEFENDANTS	:	

PLAINTIFFS' BRIEF IN SUPPORT

INTRODUCTION

Plaintiffs commenced this action against Defendants by way of civil Complaint on January 13, 2015. Plaintiff U.S. Law Shield of Pennsylvania brings this suit as a membership organization, specifically through Relator Todd Hoover. Plaintiff Justin McShane brings his claims as an individual. Justin McShane, along with co-counsel Michael Giaramita, was also counsel of record at the time of filing. Defendants filed a Motion to Disqualify Plaintiffs' Counsel and Law Firm, and make the assertion that Attorney McShane should be disqualified from this action under Pa.R.C.P. 3.7(a). Defendants further maintain that Attorney McShane — and The McShane Firm in its entirety, by way of imputation— should be disqualified under Pa.R.P.C. 1.7. These assertions are without merit, and for the reasons set forth below, must fail. As a result, Plaintiffs respectfully request that this Court deny Defendants' Motion in its entirety.

ARGUMENT AND AUTHORITIES

I. Any Disqualification Based on Rule 3.7 Would be Premature at this Juncture

Defendants base their Motion to Disqualify upon Pa.R.P.C. 3.7(a). However, Defendants' contentions simply defy the plain text, and Pennsylvania courts' interpretations of the law. Defendants fail to cite any Pennsylvania case law, suggesting instead that this Court rely upon persuasive authority from federal district courts, and a single sentence from the Third Circuit. Furthermore, the case law Defendants provide is inapplicable under the facts and circumstances. In contrast, Plaintiffs offer case law from Pennsylvania courts, which pertain to facts and circumstances analogous to the matter at hand.

In full, Pa.R.P.C. No. 3.7 reads:

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;
(2) the testimony relates to the nature and value of legal services rendered in the case; or
(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Pennsylvania courts have recognized that the rule solely prohibits a lawyer from advocating "at a ***trial***," as a plain reading of the text would suggest. Even if an attorney is likely to be a necessary witness at trial, the rule "bars the lawyer who will testify only from acting as an advocate at trial. There is no prohibition against providing representation prior to the trial." *Davisair, Inc. v. Butler Air, Inc.*, 40 Pa. D. & C.4th 403, 406 (Com. Pl. 1998). As a result, a "defendant is not entitled to a court order barring plaintiff's counsel from representing plaintiff prior to the trial of these proceedings." *Id.* In *Davisair*, the court reasoned, "nothing within the comment to Rule 3.7 suggests that the rule is intended to reach situations not explicitly covered by the language of the rule." *Id.* Accordingly, the court in that case flatly rejected persuasive authority that defendant offered from federal courts that suggested that counsel should be disqualified at depositions or pretrial proceedings. In support of this rejection, that court found that the rule was carefully drafted to limit its application to trial, and the federal courts were "rewriting rather than interpreting Rule 3.7."*Id.* at 409.

Although not binding, this concept is further confirmed by a federal case that Defendants cite in its own Motion; yet seemingly choose not to highlight. Defendants' Motion to Disqualify Plaintiffs' Counsel and Law Firm ¶ 13. "[A]n attorney may continue to represent a client in an action in which he will be called as a witness up to the actual trial in the case." *Elec. Lab. Supply Co. v. Motorola, Inc.*, No. CIV. A. 88-4494, 1990 WL 96202, at *2 (E.D. Pa. July 3, 1990).

In *Golomb & Honik, P.C. v. Ajaj*, another trial court made a similar finding that was affirmed by the Superior Court. 51 Pa. D. & C.4th 320 (Com. Pl. 2001) *aff'd sub nom. Golomb & Honik v. Ajaj*, 859 A.2d 840 (Pa. Super. Ct. 2004). In that case, the court concluded that the defendants' attorney was likely to be a necessary witness at trial, and even found that "given the present facts, it would be improper for [the attorney] to represent the Defendants at trial." *Id.* at 3. However, despite these findings, that court held that "the problem with the Motion . . . is its timing" and "[a]s a result, the Motion, which requests immediate disqualification, is overbroad and premature." *Id.*

Finally, another trial court reached a conclusion consistent with those cited above in *Albert M. Greenfield & Co., Inc. v. Alderman*, 52 WL 1855056 Pa. D. & C.4th 96 (Com. Pl. 2001). That court expressly noted "the consensus in Pennsylvania is that counsel may still represent a client in the pretrial stage." *Id.* at *8. Even though the court recognized that the attorney in question was potentially a necessary witness, it ultimately ruled that it "need not disqualify [him] at this juncture and [he] may still represent [the client] in all pre-trial matters." *Id.* at *10.

Although Defendants in this case offer *Electric Laboratory Supply Company v. Motorola, Inc.* as persuasive authority, it should have no bearing on this Court's decision. CIV. 88-4494, 1990 WL 96202, at *3 (E.D. Pa. July 3, 1990). In that case, the court determined that "the attorney-witness rule is inapplicable to attorneys representing themselves *pro se*." *Id.* at *2. Defendants assert that the court "held that a *pro se* attorney party cannot represent other parties to the litigation." *Defendants' Motion to Disqualify Plaintiffs' Counsel and Law Firm*, ¶ 13. On the contrary, that court found that "since [the attorney was] a defendant in [the] case, denying plaintiffs the opportunity to call him as a witness denies plaintiffs the full opportunity to present

their case to the jury." *Id* .at *3. Defendants paraphrased, "plaintiffs need to be able to cross-examine every defendant." Although Plaintiffs disagree that the court's determination had anything to do with "cross-examination," even this misinterpretation properly identifies the issue with Defendants' motion. While Defendants in this case filed this Motion before even filing responsive pleadings, Rule 3.7 will not be relevant until trial is impending.

The rule's prohibition is clearly and unambiguously limited to advocacy ***at trial*** if the attorney is likely to be a necessary witness, ***at trial***. The case law cited above supports this plain reading. By Defendants' own admission, this litigation is "in its infancy." *Defendants' Motion to Disqualify Plaintiffs' Counsel and Law Firm*, ¶ 9. In fact, Defendants have yet to respond to Plaintiffs' Complaint. Although Plaintiffs have filed a Motion for Preliminary Injunction, and have presented oral argument on that motion, a stay of proceedings is pending at the Defendant's insistence, following this Court's determination on Plaintiffs' Motion. Even if McShane were likely to be a necessary witness at trial, his advocacy would not be prohibited throughout pretrial proceedings, but solely at trial. Because trial will not take place at any time in the foreseeable future, Defendants' Motion is extremely premature. Therefore, Plaintiffs respectfully request that this Court dismiss Defendants' Motion.

II. McShane is Not Likely to be a Necessary Witness at Trial

The prohibitions of Rule 3.7 are additionally inapplicable because McShane is not likely to be a witness at trial. Considering the issues of this action are heavily dependent on the law, rather than the facts, this action is likely to be resolved prior to trial. It is unlikely that there will be a genuine dispute as to any material fact following discovery. Defendants' chief contention deals with Plaintiffs' claims are focused upon standing. Under 18 Pa.C.S. § 6120 as amended by Act 192, Plaintiffs unquestionably have standing. State statutes are granted a presumption of

constitutionality. *Com. v. Craven*, 572 Pa. 431, 436 (2003). Accordingly, any debate about McShane's standing *without* the amendments of Act 192 are purely speculative and inappropriate at this time. Even if this hypothetical scenario were to come to pass, this Court will have all facts necessary to make its determination regarding standing without a trial. For the reasons stated above, at present, it cannot be stated with certainty whether McShane is likely to be a witness at trial.

III. This Court is Capable of Discerning the Difference Between McShane as an Attorney and McShane as a Plaintiff. There is No Prejudice

According to Comment 2 of Rule 3.7, "the opposing party has a proper objection where the combination of roles may prejudice that party's rights in the litigation." The comment further reasons "[a] witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on the evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." Pa.R.P.C. 3.7 com. 2.

Unless and until trial is to take place, there is no reason to discuss such an issue. With respect to any and all pretrial proceedings, this Court is perfectly capable of recognizing the difference between McShane's advocacy of his client, and his role as a party to the action. The issues in this action are not heavily fact dependent, but rather rooted in issues of law. Unless and until there is immediate potential for McShane to testify **at a trial**, there is no danger of prejudice.

IV. Neither McShane nor the McShane Firm can be Disqualified under Rule 1.7

While Defendants argue that there exists a conflict of interest and The McShane Firm should additionally be disqualified by way of imputation, the Court should find this argument

erroneous. Contrary to Defendants' assertions, there exists no conflict of interest in this action. Furthermore, the reasoning Defendants have provided for their assertions is inapplicable to the facts and circumstances involved in this case.

First, Defendants concede that they were unable to produce any Pennsylvania case law consistent with this conclusion. Instead, they rely on a *Kramer v. Scientific Control Corp.*, a case which dealt specifically with a class action. 534 F.2d 1085 (3d Cir. 1976). The plaintiffs sought damages, and the damages ultimately recovered would necessarily have an impact on the attorneys' fees. For this specific reason, that court also held that the substitution of the attorney/party's partner or employee could not cure the flaw. *Id.* at 1092.

Unlike *Kramer*, the present matter is not a class action. Plaintiffs do not even seek damages, but rather seek injunctive and declaratory relief. By the very wording of the court in *Kramer,* its holding would have no bearing on this case, even if Third Circuit authority were binding. That court stated in its footnote, "[t]here might be cases, appropriate to class action treatment, where success would not result in a beneficial fund for the class. In such circumstances, the conflict of interest impediments to an attorney-plaintiff class representative also serving as counsel might not be present. We do not decide the rule that should obtain in such circumstances." *Kramer* at n.10.

In its efforts to propel its argument, Defendants resort to attacks on McShane's motivations. Wielding nothing more than hearsay, Defendants fail to establish a single credible point. Specifically, Defendants blatantly mischaracterize *quotations of local media*, not even those of McShane, as its sole factual basis to claim a conflict of interest exists. See *Defendants' Motion to Disqualify Plaintiffs' Counsel and Law* Firm, ¶¶ 19-20. These averments do not reflect

McShane's opinions, motivations or anything McShane has even said. Instead, the gross distortions provide a perfect example of why hearsay is inadmissible as evidence.

Defendants additionally cite Rule 1.7(a)(2) as a purported basis to disqualify Attorney McShane and the McShane Firm. However, the prohibitions of Rule 1.7(a)(2) do not apply under the facts, and in turn, do not provide a basis for disqualification.

Rule 1.7 reads:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent.

Pa.R.P.C. 1.7. Comment 2 of Rule 1.7 elaborates upon the purpose of the Rule, and states in pertinent part, "[r]esolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict,

i.e. whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent."

Further, although Defendants fail to recognize the same, 1.7(b) provides a specific mechanism to cure any potential conflicts. In conjunction with the guidance provided by the comments to this rule, McShane has met all of the requirements set forth in 1.7(b).

In this case, there is no risk, let alone a significant risk, that representation of Plaintiff U.S. Law Shield will be materially limited by any personal interest of McShane or The McShane Firm. Although McShane maintains his own claim in this action, this will not "materially limit" his advocacy on behalf of Plaintiff U.S. Law Shield in any manner. Attorney McShane and the McShane firm have every incentive to zealously represent U.S. Law Shield in the same manner as any other litigation. Moreover, U.S. Law Shield and McShane's interests do not conflict, but rather are heavily aligned. Each party has the same interest in injunctive and declaratory relief.

Even if this were a legitimate issue, The McShane Firm has resolved any potential conflicts as set forth in Comment 2 of Pa.R.P.C. 1.7. Plaintiff U.S. Law Shield is well aware that McShane is additionally a party to the action. After a thorough discussion with U.S. Law Shield about the potential "conflict of interest," U.S. Law Shield made an informed decision to employ McShane as counsel. To commemorate this decision, Relator Todd Hoover —having authority to do so— signed a conflict waiver addressing the issue. See *Exhibit A*. This conflict waiver is sufficient, and has been reviewed by an ethicist for content.

Because there is no conflict in the interest of Plaintiff U.S. Law Shield and Attorney McShane, the prohibitions of Rule 1.7 do not apply. Additionally, in the interest of being absolutely thorough, Attorney McShane has cured all potential issues presented by Pa.R.P.C. 1.7.

Defendants' claim falters logically as well as factually. This is not a class action, and either Plaintiff's decision to settle any or all claims against the Defendants is completely within their own authority. McShane simply has no authority to deny U.S. Law Shield the ability to settle. Furthermore, Plaintiffs collectively conveyed an offer to waive all attorney fees in exchange for repeal of the ordinances on Thursday, February 5, 2015 at 12:30 pm. See *Exhibit B*. Despite opposing counsel's concern for Plaintiff U.S. Law Shield's ability to reach a settlement agreement because of McShane, opposing counsel failed to even provide its clients' response to the offer. It is unclear whether opposing counsel even conveyed the offer to Defendants. At most, this claim is an imagined problem born out of a desire to delay as the City and its leadership has made it very clear that they will never settle this matter. In fact, in chambers and before the Court, the Defendants stated that they would appeal any form of preliminary injunction if the relief is granted.

It is ludicrous to contend that McShane has a conflict of interest, and one capable of imputing his entire firm no less, merely because the total of attorney fees will rise the longer the litigation continues. See *Defendants' Motion to Disqualify Plaintiffs' Counsel and Law Firm*, ¶ 18. If this were the case, attorneys who charge on an hourly basis would always necessarily have a conflict of interest. This is indeed the case with most civil defense attorneys, and may well be the arrangement Defendants have with opposing counsel. Although any attorney paid on an hourly basis could potentially make decisions adverse to his client's interests simply to increase his total fee, this mere potential does not rise to a reason for disqualification. Instead, the law recognizes that attorneys have a responsibility to act in their client's best interest, rather than their own.

Similarly, imputation under Pa.R.P.C. No. 1.10 is not an issue in this matter. According to Rule 1.10:

> (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm, or unless permitted by Rules 1.10(b) or (c).

Even in the far unlikely event that this Court disqualified McShane under Rule 1.7, there are no grounds to disqualify The McShane Firm under Rule 1.10. First, any "conflict of interest" Defendants even allege are based upon McShane's personal interests. Considering the same, under Rule 1.10(a) imputation is inapplicable when "the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm." In accordance with the rule, any such interest poses no threat to any other attorney in The McShane Firm. In any event, Plaintiff U.S. Law Shield is well informed of the situation, and has waived any potential conflicts as evidenced by Exhibit "A."

CONCLUSION

As discussed above, Defendants' Motion to Disqualify misinterprets the Pennsylvania Rules of Professional Conduct. Moreover, the non-binding case law Defendants cite is distinguishable from the facts and circumstances at hand. Because Rule 3.7 clearly limits its prohibition to **trial**, Pennsylvania courts have consistently held that a Motion to Disqualify is

inappropriate and untimely **until trial is approaching**. Additionally, although Defendants have made attempts to smear McShane, no conflict exists between his own interests and Plaintiff U.S. Law Shield's interests. Nevertheless, McShane and The McShane Firm have taken appropriate measures to ensure that Plaintiff U.S. Law Shield is fully informed and cure any potential "conflict." Defendant's efforts to divert the focus from the merits of Plaintiffs' claims must fail for the reasons set forth above.

WHEREFORE, premises considered, Plaintiffs pray this Court DENY Defendant's *Motion to Disqualify Plaintiffs' Counsel and Law Firm* and allow Plaintiffs to proceed on the merits of their claims.

Respectfully submitted,

THE MCSHANE FIRM, LLC

Date: 2/9/15

Justin J. McShane
Attorney ID No. 87919
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Date: 2/9/2015

Michael Antonio Giaramita Jr.
Attorney ID No. 319299
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Attorneys for Plaintiffs

Exhibit "A"

THE MCSHANE FIRM

3601 VARTAN WAY
2nd FLOOR
HARRISBURG PA 17110
t: 717.657.3900
f: 717.657.2060
w: www.TheMcShaneFirm.com

JUSTIN J. MCSHANE, JD, F-AIC
TIM M. BARROUK, ESQ.
SHAWN M. DORWARD, ESQ.
T.C. TANSKI, ESQ.
KATHERINE KENNEDY, ESQ.
RICHARD S. ROBERTS, ESQ.
JOHN AROSE, ESQ.
MICHAEL A. GIARAMITA, ESQ.

KURT GRIFFIN
office manager

CATHI LEIGH MCADAMS
senior paralegal

HEIDI ETTER
paralegal

MEGAN FRAWLEY
paralegal

KIM HAIN
paralegal

VIRGINIA L. FESSLER
document manager

GLENDA RICE
accountant

JEN KAIN
receptionist

February 5, 2015

Todd Hoover on Behalf of U.S. Law Shield
C/O The McShane Firm, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, PA 17112

Re: *U.S. Law Shield of Pennsylvania, ex rel Todd Hoover; Justin J. McShane, an Individual v. City of Harrisburg, et al.*
Docket No.: *2015-CV-255-EQ*

I, Todd Hoover, on behalf of U.S. Law Shield of Pennsylvania, by signing this document do assert and acknowledge that the McShane Firm, LLC will represent the both U.S. Lawshied of Pennsylvania, and Justin J. McShane in the above captioned legal matter. Specifically, we acknowledge that Justin J. McShane, Esquire will represent U.S. Lawshied of Pennsylvania and Michael A. Giaramita, Esquire will represent Justin J. McShane. I wish to waive any possible claim of a conflict of interest in my representation by the McShane Firm, LLC and Justin J. McShane, Esquire and Michael A. Giaramita, Esquire. I acknowledge that Justin J. McShane, Esquire and Michael A. Giaramita, Esquire are both lawyers in the same firm of the McShane Firm, LLC.

Additionally, I recognize that Justin J. McShane is both an attorney and a plantiff in this matter. As such, I recognize and waive any possible conflict of interest arrising out of such dual role.

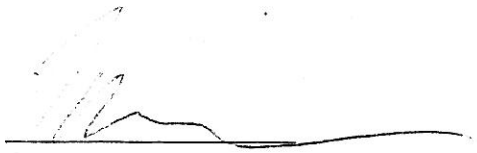
We release the McShane Firm, LLC and Justin J. McShane, Esquire and Michael A. Giaramita, Esquire from any possible cause of action that might result from said waiver or the subsequent representation.

I realize that we might have different vested interests in the outcome of the case that and that our interests may conflict. Nevertheless, I wish for the McShane Firm, LLC, Justin J. McShane, Esquire and Michael A. Giaramita, Esquire to represent the parties as outlined above.

By signing below, I assert that I have fully and completely read this agreement. I assert that this document contains the full and complete understanding between the parties and that no other warranties or guarantees have been made either orally or in writing. I acknowledge that this waiver of conflict of interest is revocable only upon written

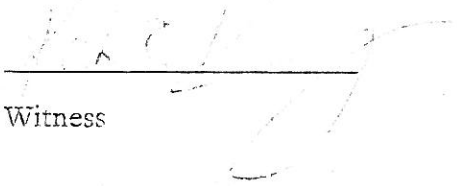
notice served personally to Justin J. McShane, Esquire and/or Michael A. Giaramita , Esquite. I acknowledge that this waiver regarding any cause of action is not revocable.

I enter into this waiver knowingly, intelligently and voluntarily. It is borne out of my own free will and choice to take this course of action having been fully and completely advised of these consequences.



Todd Hoover

Executed this 5th day of February, 2015



Witness

Exhibit "B"

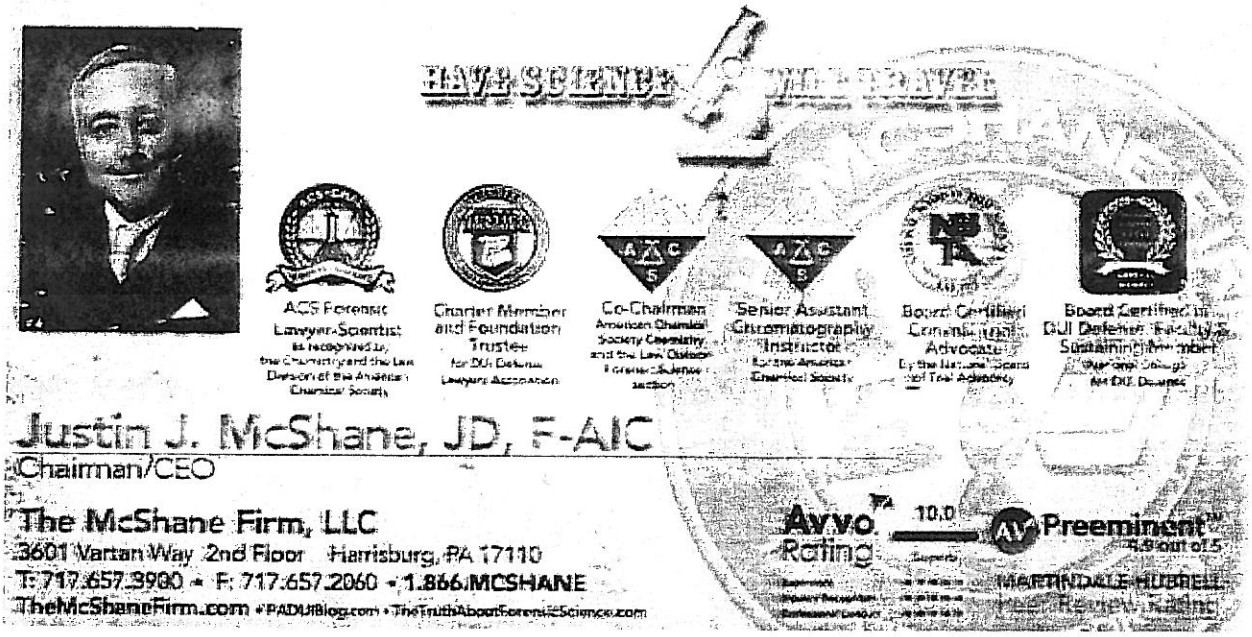
Justin McShane

From:	Justin McShane
Sent:	Thursday, February 05, 2015 1:30 PM
To:	flavery@laverylaw.com; 'JAutry@laverylaw.com'
Cc:	Mike Giaramita
Subject:	FW: U.S. Law Shield v. City of Harrisburg, 2015-CV-255-EQ

Tracking:	**Recipient**	**Read**
	flavery@laverylaw.com	
	'JAutry@laverylaw.com'	
	Mike Giaramita	Read: 2/5/2015 1:34 PM

I unintentionally left co-counsel off of the email distribution.

Sincerely,
/s/ Justin J. McShane, JD, F-AIC



The McShane Firm, LLC-The Science Attorneys
3601 Vartan Way
2nd Floor
Harrisburg, PA 17110
t: 7176573900
f: 7176572060
w: www.TheMcShaneFirm.com
e: justin@TheMcShaneFirm.com

You can follow me on Twitter, Facebook, Linkedin and the www.TheTruthAboutForensicScience.com blog and the PADUIBlog.com

---

From: Justin McShane
Sent: Thursday, February 05, 2015 1:21 PM
To: 'flavery@laverylaw.com'
Cc: Mike Giaramita
Subject: U.S. Law Shield v. City of Harrisburg, 2015-CV-255-EQ

Thank you for taking my call at 1230 today. During this call I made a formal offer to your clients.

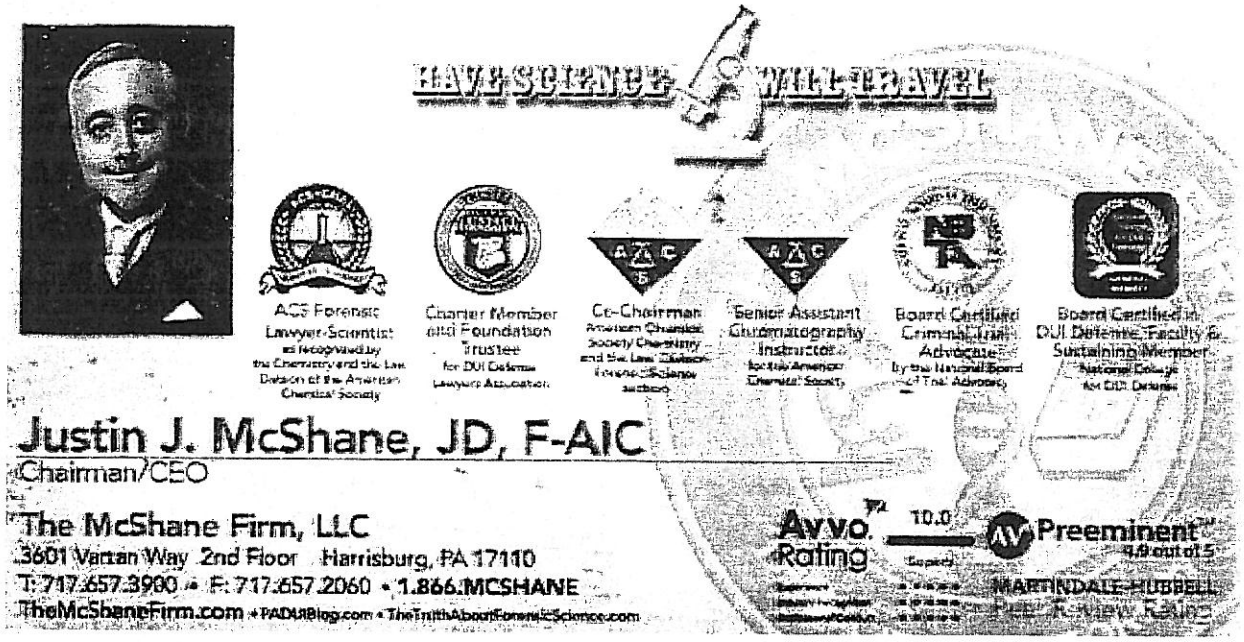
The offer is as follows: That in exchange for a commitment from City Council and the Mayor that at the very next public meeting where legislative affairs can be motioned and passed that Council will place on the agenda a properly worded and legally binding motion to rescind the City Ordinances that are at question in this lawsuit on the agenda. Further, there must be a commitment from Council that the motion will be properly passed (who votes for or against, we don't care). There would need to be a commitment from the Mayor not to veto this. If there is a firm commitment per the above, then the Plaintiffs agree not to seek counsel fees.

I told you over the phone that the offer would be open until the end of business today. However, we have re-examined that and the Plaintiffs have decided to extend the offer until 1pm tomorrow.

However, we request (not a demand) that you would let us know of your position by the end of business as I am sure that you have already started talking to your Defendants.

If the offer is acceptable, then mechanically, we would all appear in court tomorrow and outline on the record the terms and conditions of the settlement and would enter into a joint motion to continue the temporary injunction as well as ask the court not to act on any pending motions. We note that the next legislative session that Council has given public notice to is on February 10. The continuance would be until shortly after that next meeting per the Court's schedule.

Sincerely,
/s/ Justin J. McShane, JD, F-AIC



The McShane Firm, LLC-The Science Attorneys
3601 Vartan Way
2nd Floor
Harrisburg, PA 17110
t: 7176573900
f: 7176572060
w: www.TheMcShaneFirm.com
e: justin@TheMcShaneFirm.com

You can follow me on Twitter, Facebook, Linkedin and the www.TheTruthAboutForensicScience.com blog and the PADUIBlog.com

---

Justin McShane

From: Joshua M. Autry <JAutry@laverylaw.com>
To: Justin McShane
Sent: Thursday, February 05, 2015 1:35 PM
Subject: Read: U.S. Law Shield v. City of Harrisburg, 2015-CV-255-EQ

Your message

To:
Subject: U.S. Law Shield v. City of Harrisburg, 2015-CV-255-EQ
Sent: Thursday, February 05, 2015 1:31:54 PM (UTC-05:00) Eastern Time (US & Canada)

was read on Thursday, February 05, 2015 1:34:42 PM (UTC-05:00) Eastern Time (US & Canada).

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Answer To Defendants' Motion To Disqualify Plaintiffs' Counsel and Law Firm and Brief In Support was sent via United States Mail, postage prepaid on this 9TH day of FEBRUARY 2015, to all known counsel of record listed below:

Frank Lavery Jr.
Joshua M. Autry
Jessica Hosenpud
LAVERY FAHERTY
225 Market Street
P.O Box 1245
Harrisburg, PA 17108
Attorneys for Defendants

Date: 2/9/2015

THE MCSHANE FIRM, LLC

Justin J. McShane
Attorney ID No. 87919
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Date: 2/9/2015

Michael Antonio Giaramita Jr.
Attorney ID No. 319299
THE MCSHANE FIRM, LLC
3601 Vartan Way, 2nd Floor
Harrisburg, Pennsylvania 17110
P: (717) 657-3900
F: (717) 657-2060

Attorneys for Plaintiffs