

**BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In the Matter of the Philadelphia Water Department's Proposed Changes  
in Rates and Related Charges—

2022 TAP-R Reconciliation Proceeding – FY2023

EXCEPTION TO THE HEARING OFFICER'S REPORT

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## **I. SUMMARY OF EXCEPTION**

Lance Haver, Pro Se, files this exception. The hearing notice was defective, it was not in plain English by any definition of the term. Even if it was, that would not be sufficient to meet the City's Requirement Under [Section 8-600 of the Philadelphia Home Rule Charter](#) that all posts must ensure that individuals with "limited English proficiency" are able to access City services. Section 8-600 establishes a required process, which the Philadelphia Water Rate Board, the Philadelphia Water Department and the public advocate failed to follow.

The public advocate provided inadequate representation, failing to protect the public's right to have all notices written for those with limited English proficiency, failure to engage the public as demonstrated by the lack of public participation, the failure of the public advocate to create a client group, the failure of the public advocate to disclose financial conflict of interests and the failure of the public advocate to protect struggling water consumers from the tax to pay for a low income plan, which is being hidden by referring to it as an annual reconciliation.

The Hearing Officer committed reversible error, after reviewing participant Haver's objection to the settlement which included a claim of inadequate representation by the public advocate. The Hearing Officer in a prejudicial directive, attempted to help create the appearance that the public advocate engaged the Public by asking the public advocate to file a post hearing exhibit. As the Hearing Examiner knew, or should have known that Participant Haver would raise the issue, the Hearing Examiner aided and abetted the public advocate's attempt to cover up its inadequate counsel. The Hearing Examiner compounded her prejudicial rulings by denying Participant Haver's motion to strike the post hearing exhibit, by deciding it had no probative value, when of course it did. In *Strickland Vs Washington*, (466 U.S. 668 (1984)) the United States Supreme Court ruled that all that is necessary for petitioner to succeed on the merits is "**A Reasonable Probability**" that the "the result of the proceeding would have been different". The very fact that the public advocate thought so little of its charge of representing the

public that it did not file any proof of engaging the public until the Hearing Officer, in her attempt to help provide cover, requested it do so. The Hearing Officer, unbelievably ignored the fact that the public advocate claimed to send the same email on the same day to the same people about two different proceedings.

The argument that ineffective counsel is limited to criminal law, where a member of the Public is appointed a lawyer, like the public is appointed a public advocate, not administrative law, is a case of first impression and it is prejudicial and impermissible for a lower court judge to decide on an issue without foundations for ruling.

## II Violation of Philadelphia Home Rule Charter Section [Section 8-600](#)

1. Section 8-600 of the Home Rule Charter sets out a process for each department of the City to follow to ensure that even people with limited English proficiency can engage in the City's programs and processes. Certainly, a hearing on how much should water rates be increased, is a City Program. And because there is a correlation between poverty and limited literacy, and the burden of higher water rates falls most heavily on low-income families who do not know and are /or are not eligible for the TAP program, the process of ensuring that those of limited English proficiency be able to understand what the Philadelphia Water Rate Board was considering is of critical importance.
2. Here is what was published according to the Hearing Examiner's report:  
  
**"Advance Notice of the Department's proposed changes to its Tiered Assistance Program Rate Rider Surcharge rates (TAP-R), proposed to become effective September 1, 2022."**
3. This notice in no way states that a rate increase is being considered. As for it being accessible and

understandable for someone who has limited English proficiency, as required by the Home Rule Charter, it does not come close to meeting the requirement. Nor did the Philadelphia Water Rate Board, the Philadelphia Water Department or the public advocate follow the processes mandated by the Home Rule Charter.

4. The hearing was to decide if rate payers would be forced to pay more to cover the cost of a low-income plan. Because Philadelphia requires water service for a building to be habitable and the Department of Human Services will remove minors from households without water service, water service is a legal requirement for living in the City of Philadelphia. A sur charge, to pay for a government program, no matter how needed or well-intentioned the program is, is a tax. It is the equivalent of taxing milk, eggs and bread to pay for SNAP (the program formerly known as food stamps). The Home Rule Charter requires that the issue before the Philadelphia Water Rate Board be easy to understand, the wording used was and is not.
5. Without proper notice, without providing the Public with a real and meaningful way to participate, the hearing failed to meet the legal requirements. As such the Hearing Examiner errors when suggesting that technical language, disregard for the Philadelphia Home Rule Charter's requirements does not matter.

### III. Inadequate Representation:

6. The Issue is not does the Public have a right to be represented in administrative law hearings. The decision to have the Public represented was made by the Philadelphia Water Rate Board to appoint a public advocate during this proceeding.

7. The issue is: did the appointed public advocate fail to represent the public? It did.

8. In *Strickland Vs Washington*, (466 U.S. 668 (1984)) the United States Supreme Court ruled that all that is necessary for petitioner to succeed on the merit of an inadequate representation petition is “**A Reasonable Probability**” that the “the result of the proceeding would have been different”.

9. The awardee of the no bid contract, failed to create a client committee to advise the public advocate, failed to enforce Section 8-600 of the Philadelphia Home Rule Charter, which mandates that public notices be accessible to those with limited English Proficiency, and failed to make a meaningful attempt to engage the public as proven by the lack of public participation at the hearing.

10. Despite the Hearing Officer’s help, the public advocate’s record shows how little work it did to engage the public. No emails to register community organizations, a handful of emails, without knowing if they were opened, no follow up phone calls, no attempt to understand the best way to engage the public.

11. Without speaking with a client, it is impossible for a lawyer to represent a client.

12. Agreeing to a settlement, without informing the client, without getting the client’s consent to the agreement is inadequate representation and mal practice.

13. No settlement created without the client’s knowledge or approval should be accept by any adjudicatory body.

14. To claim that the public advocate doesn't have to represent the public, has no responsibility to engage the public makes is to suggest that it all right to mislead the public into believing it is represented.

15. If the Philadelphia Water Rate Board did not expect the public advocate to engage and represent the public, if the public advocate answers to no one, other than itself, it is disingenuous to continue to refer to it as the public advocate.

#### IV. Conflicts of Interest

16. The public advocate's law firm has a financial conflict of interest receiving over 67% of its annual income from the owners of the Philadelphia Water Department:

### FINANCIALS JULY 01, 2020 - JUNE 31, 2021

| REVENUE & OTHER SUPPORT |                     | EXPENSES              |                     |
|-------------------------|---------------------|-----------------------|---------------------|
| Contracts & Grants      | \$13,311,701        | Program Services      | \$15,835,105        |
| Contributions           | \$4,862,747         | Management & General  | \$1,297,193         |
| Attorney Fees           | \$227,059           | Fundraising           | \$397,190           |
| Interest Income         | \$4,943             | <b>Total Expenses</b> | <b>\$17,529,488</b> |
| Other Income            | \$1,412,700         |                       |                     |
| <b>Subtotal Revenue</b> | <b>\$19,819,150</b> |                       |                     |

17. The public advocate's law firm failed to disclose its financial reliance upon the good will of the owners of the Philadelphia Water Department.

18. The public advocate's law firm failed to seek a release of the conflict

19. On the record the person serving as the public advocate never disclosed the conflict.

20. The Philadelphia Water Rate Board failed to disclose the conflict.

21. Rule 1.7 – Conflict of Interest: Current Clients:

Conflict of Interest: Current Clients(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.

**“Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client.”** -- General Principles of Rule 1.7

22. If the public advocate were to take a position that angered the owner of the Philadelphia Water Department, the law firm's largest funder, it creates the possibility that the law firm would lose revenue, sufficient enough to force the law firm into bankruptcy—a clear violation of Rule 1.7.

23. Rule 1.7 can be overcome by “(4) each affected client gives informed consent”. As the public advocate failed to disclose the fact that the owner of the Philadelphia Water Department was its largest financial contributor, no client consent could have been given.

24. Two members of the Law Firms executive committee have financial interests in US Bank, an out of city bank that has no retail branches in Philadelphia, which has both served as bond agent for the Water Department and holds 10's of millions of dollars in the Water Department's “stabilization fund”. The hiring of US Bank deprives Philadelphians of resources that would recirculate in the City of Philadelphia leading to mis opportunity costs. While we will never know why the the public advocate has refused to challenge question or even ask about why the money isn't kept in a bank that creates jobs in Philadelphia, it is within reason to think it may have something to do with the financial interests of the executive committee of the public advocate's law firm.

25. The acting public advocate has refused to file a financial disclosure form, a conflict-of-interest form or any disclosure of his and/or his law firms financial relationship with the owner of PWD and/or any of the contractors PWD uses.

26. The conflicts, more than just the appearance of a conflict, but actual conflicts make the public advocate representation, the refusal to disclose fianacial interests, the refusal to establish

a client group, the refusal to engage community groups, proves the public advocate's representation of the public is ineffective. In no civil case would a lawyer be allowed to enter into a settlement without his client's agreement, and it should not be allowed in this case.

#### **IV. Biased Hearing Officer**

27. The Hearing Examiner has attempted to help the public advocate by asking for exhibits to be filed after the close of discovery and the hearing so that parties could not investigate the veracity or accuracy of the exhibit.

28. The Hearing Officer after reading participant Haver's contention that the public was not adequately represented helped the public advocate create the appearance it did something to engage the public.

29. Without the Hearing Examiner helping the public advocate present its case, there would be nothing on the record that suggested the public advocate did anything to engage the public. While the filing underscores how little the public advocate did and how little they cared about the public involvement, the Hearing Officer's on the record help is prejudicial to Participant Haver's claims.

30. The Hearing Officer denied Participant Haver's motion to strike the exhibits filed after the close of discovery and after the hearing was closed stating the exhibits have no "probative value". This ruling was not based on rules, regulations and/or case law. Instead, it was an attempt to help the public advocate create the appearance that it had engage the public.

31. The Hearing Officer claims that the public advocate using the same exhibit in two different hearings, showing only one email sent while claiming two were sent, was not germane is inexplicable. The proof that the public advocate cared so little about public engagement is that, even giving it the benefit of the doubt that it actually sent two emails, to the same person on the same day without any follow up, without any follow up was sufficient to engage the public. It fails to pass the laugh test. Because the Hearing Officer is/was prejudicial, she ignores the proof that the public advocate failed to engage the public in any meaningful way.



## V. The Settlement Is Not In The Public Interest

32. It is not in the Public Interest to ignore the Law outlined in the Philadelphia Home Rule Charter

33. It is not in the Public Interest to ignore conflicts of interests

34. It is not in the Public Interest to allow the owner of the Philadelphia Water Department to have significant control over the public advocate's law firm

35. It is not in the Public Interest to make those struggling pay for a low income plan, no matter how needed or well intentioned.

36. It is not in the Public Interest to place a tax on water bills to pay for a low income plan, as water is a basic necessity of life and it would be akin to placing a sales tax on baby formula, milk, eggs and bread to pay for SNAP.

## Verification

I, Lance Haver, do hereby certified that the information filed is to the best of my knowledge correct. I certify that I have filed the above exception to all the parties on the list.

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