

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

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater, and Stormwater Rates and Related Charges **Fiscal Years 2024 – 2025 Rates and Charges to Become Effective : September 1, 2023 and September 1, 2024**

**EXCEPITONS AND RESPONSES TO
COMMUNITY LEGAL SERVICES OBJECTIONS TO
HAVER DISCOVERY REQUESTS**

The Issues before the Water Rate Board in deciding if it will force Community Legal Services to comply with discovery requests are:

Should Community Legal Services be held the same standards as all other parties
Should the Rate Board follow its own rules regarding transparency “**1. The content of an email – not its location – determines whether it is a public record.** If an email is made or received in connection with the transaction of public business, it is a public record regardless of whether it is created or stored on a public or a private computer, mobile device, or email system. So an email that relates to public business is a public record even if it is sent from a home computer, or made on a personal email account from any device. This is true whether the email is sent or received by any public employee, or any elected or appointed public official.”--
Professor of Public Law and Government, Bluestein. . .

Does the work the public pays for belong to the public or the public employees paid to do the work? If all emails between city employees are discoverable is it permissible for the Rate Board, a City Board, employee to put itself above the case law and refuse to disclose emails. **Under the Federal Rules of Civil Procedure. Specifically, personal emails would be considered “electronically stored information” under FRCP 34(a)(1)(A) and discoverable**

Should Community Legal Services be allowed to ignore a United States Supreme Court Order **“The possibility of a conflict of interest was sufficiently apparent at the time of the revocation hearing to impose upon the court a duty to inquire further.”**

--Wood v. Georgia, 450 U.S. 261 (1981)

Mr. Ballenger's answer to LH-I-2. is non responsive. LH-I-2 seeks a written document that explains to the public how Mr. Ballenger and CLS make decisions as to what positions to take. If no such document exists, Mr. Ballenger should state that. The Hearing Examiner should order him to do so.

Mr. Ballenger's answer to LH-I-3 is non responsive. Mr. Ballenger has stated, on the record, that the contract is with Community Legal Services and not himself individually which, is why he argued it was not a bribe to accept a contract renewal as an inducement to settling the last water rate case. If Mr Ballenger is now saying that the contract with the Water Rate Board hires him, not CLS, it should be made clear that he has, once again, changed what he is saying. The Hearing Examiner should order him to make it clear.

Mr. Ballenger's answer to LH-I-4 is non responsive. The question was how many elected officials has the "Public Advocate". The question did not ask who they reached out to, whatever that means. If the answer is, that despite being aware of 14 members of City Council are objecting to the rate increase, Mr. Ballenger's team has met with exactly none, the record should reflect that. The Hearing Examiner should order him to put on the record how many elected officials Community Legal Services has met with.

Mr. Ballenger's objection to LH-I-8 should be overruled. The courts have ruled that it is not just a conflict of interest that should be avoided, but the appearance of a conflict of interest. As Community Legal Services board members represent and do business with multi national and in many cases muli billion dollar businesses, there is an appearance of a conflict of interest. As Mr. Ballenger has claimed that it is Community Legal Services in its entirety that decides on what positions the "public advocate" takes, (see Ballenger's answer to LH-I-2,) I have a right to know if any director of Community Legal Services have a conflict of interest as it now appears likely. It is not overly burdensome. All that Mr. Ballenger has to do is send out an email with the list of companies that do business with the Philadelphia Water Department to each board member and ask if that board member has any relationship with any of the businesses and if so, to disclose what that relationship is

Mr. Ballenger's objection LH-I-9 should be overruled. LH-I_9 seeks public information. The relevancy, is clear. Mr. Ballenger claims that CLS makes decisions on what positions to take(see Ballenger's response to LH-I-2) and if CLS is dependent upon the owners of the Philadelphia Water Department for a significant amount of its annual operating budget, it should be disclosed. Transparency demands that CLS list how dependent it is upon the owners of PWD, the City, for CLS's operating budget.

Mr. Ballenger's objection LH-I-10 should be overruled. The contract for the Public Advocate to serve as an advisor to the Philadelphia Water Rate Board, is paid for with public dollars. The emails constitute public documents and I have a right to review them. See **the Federal Rules of Civil Procedure. Specifically, personal emails would be considered "electronically stored information" under FRCP 34(a)(1)(A) and discoverable**

Mr Ballenger's objection to LH-I-11 should be over ruled. The contract for the Public Advocate to serve as an advisor to the Philadelphia Water Rate Board, is paid for with public dollars. The emails constitute public documents and I have a right to review them. See **the Federal Rules of Civil Procedure. Specifically, personal emails would be considered "electronically stored information" under FRCP 34(a)(1)(A) and discoverable**

Mr. Ballenger's answer to LH-I -12 is non responsive. The question is who will Community Legal Services consult with before agreeing to a settlement agreement. Mr. Ballenger fails to provide an answer.