

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. **C-687350**

DIVISION _____

SECTION: _____

ZACH PARKER

VERSUS

**JAY DARDENNE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF
ADMINISTRATION, DIVISION OF ADMINISTRATION, STATE OF LOUISIANA**

FILED: _____

DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS

NOW INTO COURT, through undersigned counsel, comes the Petitioner herein, Zach Parker ("Petitioner"), who files this Petition for Writ of Mandamus, and who, with respect to same, does hereby allege, aver, espouse, attest, and state as follows, to-wit:

1.

The Petitioner is an individual of the age of majority, a resident of Monroe, Louisiana, and a reporter for *The Ouachita Citizen* newspaper.

2.

Made Defendant/Respondent herein is Jay Dardenne, in his capacity as Commissioner of Administration and Custodian of Records for the Division of Administration, State of Louisiana, enjoying the right to sue and be sued in this Court.

3.

The Ouachita Citizen has, for several years, been covering the ongoing saga of Allyson Campbell, a Fourth Judicial District Court law clerk who has been accused of negligence in her office in civil actions against her and the Judges of the Fourth Judicial District in Monroe. Petitioner has led that reporting. *See, examples attached as In Globo Exhibit 1.*

4.

On August 22, 2019, the Petitioner did make a public records request for the following public records to the Commissioner of Administration:

- The hours, rate, dates of service and money spent on legal services provided by the state on behalf of Margaret Allyson Campbell, of Monroe, who is a law clerk at Fourth Judicial District Court in Monroe. The Attorney General's office is currently representing her in a civil lawsuit, Stanley R. Palowsky III and others v. Allyson Campbell and others.

- Any and all attorneys' invoices and/or bills for legal services provided for Allyson Campbell of Monroe.

ON-CERTIFIED COPY

The request was made to the Division of Administration's e-mail address and acknowledged that same day. *See in globo Exhibit 2.*

5.

The Petitioner received a response on August 27, 2019 which denied the Petitioner's request, claiming that the records of spending were exempt pursuant to La. R.S. 44:4(15). That specific exemption of the public records law applies only to "claim files in the custody or control" of the office or risk management and is intended, by its clear language, to protect "information concerning pending legal claims in the files of any attorney representing the state." *See Exhibit 3.*

6.

La. R.S. 44:4(15) states:

To any pending claims or pending claim files in the custody or control of the office of risk management, division of administration, or similar records in the custody of any municipality or parish; to any information concerning pending legal claims in the files of any attorney representing the state or any municipality in connection with the office of risk management, division of administration, or any office with similar responsibilities of any municipality or parish; or to any pending claims relating to loss reserves maintained or established by the office of risk management, division of administration, or any office with similar responsibilities of any municipality or parish, for any claims or for losses incurred but not reported; however, this Chapter shall be applicable to reserves as reported in the financial statement of the office of risk management, division of administration, or any municipality or parish.

7.

Petitioner responded with a demand letter from undersigned counsel, making clear that "Mr. Parker is asking for the records of the amount of money the taxpayers of Louisiana have spent on [Ms. Campbell's] lawyer." *See Exhibit 4.*

8.

Petitioner's counsel made clear to the Division of Administration that redactions of any attorney-client privileged information would be accepted. *Id.*

9.

The Petitioner avers that his reporting on this matter is of public interest in expenditure of public funds in defense of a public employee accused of malfeasance or negligence in office.

10.

Petitioner avers that specifically designed to "keep the public reasonably informed about how public bodies conduct their business and how the affairs of government are handled." *City*

of *Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C.*, 4 So.3d 807, 817 (La. App. 1 Cir. 2008); The law protects the public's right to know "about the operations of a public agency, ... [and] in gaining information to evaluate the expenditure of public funds." *Id.* at 821. See also *Angelo Iafrate Const., LLC v. State DOTD*, 879 So. 2d 250, 261 (La. App. 1 Cir. 2004).

11.

A writ of mandamus, which will "compel the performance of a ministerial duty required by law," La. C.C.P. Art. 3863, is appropriate to compel Defendant to abide by his statutory duty to produce the records, in whole or in part, made subject of Petitioner's request.

12.

Petitioner respectfully requests this Honorable Court review the records *in camera* and/or order production of the request immediately.

13.

It is the law of Louisiana that: "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." La. Const. Art. 12, Sec. 3.

14.

Furthermore, "Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees." La. Rev. Stat. Ann. § 44:31.

15.

"All persons and public bodies having custody and control of any public record" are required by law to preserve the public record "for a period of at least three years." La. Rev. Stat. Ann. § 44:36.

16.

A custodian of Public Records has three days, exclusive of Saturdays, Sundays and legal public holidays, to produce public records. La. Rev. Stat. Ann. § 44:33.

17.

The Petitioner, through counsel, made demand upon the Defendant requesting that the Defendant reconsider his wholesale denial of the request, but the Defendant has thusfar refused to do so.

18.

The Louisiana Public Records Law provides that any person who is denied the right to inspect or copy a record “may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney's fees, costs and damages as provided for by this Section, in the district court for the parish in which the office of the custodian is located.” La. Rev. Stat. Ann. § 44:35(A).

19.

Suits filed under the Public Records Law “shall be tried by preference and in a summary manner.” La. Rev. Stat. Ann. § 44:35(C).

20.

As stated in La. Rev. Stat. Ann. § 44:31(B)(3), the “burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.”

21.

The Louisiana Public Records Law at La. R.S. 44:35(B) allows for *in camera* inspection of documents in controversy, and the Petitioner requests such an inspection.

22.

The Louisiana Supreme Court has held that the Public Records Law should always be “construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise.... Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see.” *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984).

23.

Petitioner asserts that the outstanding request is appropriately narrow and well within the faculties and capability of the Defendant to answer.

24.

Petitioner furthermore avers that upon judgment of this Honorable Court, he should be awarded reasonable attorneys' fees and other costs of litigation under La. Rev. Stat. Ann. § 44:35(D) (“[a prevailing petitioner] *shall be awarded* reasonable attorney's fees and other costs of litigation.”) [*Emphasis added.*]

WHEREFORE, in consideration of the above and foregoing Petition for Writ of Mandamus, together with the facts stated herein, the exhibits appended hereunto, and the law and equities applicable in the premises, Petitioner respectfully moves this Honorable Court to grant the relief as prayed for in his Petition and order Defendant to produce copies of the records sought. Petitioner further (separately and/or conjunctively) prays for this Honorable Court to "order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary," in accordance with Louisiana law. Petitioner finally prays for any and all equitable relief as is available, all costs of this proceeding, and attorneys' fees as provided for under the Louisiana Public Records Law, as well as all other various relief to which Petitioner is entitled.

Respectfully Submitted,

STERNBERG, NACCARI & WHITE, L.L.C.



SCOTT L. STERNBERG (#33390)

MICHAEL FINKELSTEIN (#35476)

DAVID LaCERTE (#32535)

935 Gravier Street | Suite 2020

New Orleans, Louisiana 70112

Telephone: (504) 324-2141 | Fax: (504) 534-8961

scott@snw.law | michael@snw.law | david@snw.law

Counsel for Petitioner, Zach Parker

PLEASE HOLD SERVICE PENDING WAIVER:

The Hon. Jay Dardenne

Commissioner of Administration

1201 N. Third St., Suite 7-210

Baton Rouge, LA 70802

5
NON-CERTIFIED COPY

19TH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NO. _____

DIVISION _____

SECTION: _____

ZACH PARKER

VERSUS

JAY DARDENNE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF
ADMINISTRATION, DIVISION OF ADMINISTRATION, STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK

ORDER

Considering the Petition for Writ of Mandamus filed herein on behalf of Petitioner Zach Parker;

IT IS HEREBY ORDERED that the Defendant, Jay Dardenne, In his Official Capacity as Commissioner of Administration of the state of Louisiana, be served with the foregoing Petition and a copy of this Order, and that an alternative writ of mandamus shall issue herewith, directing and compelling Defendant to immediately produce the public records requested, or show cause to the contrary.

IT IS FURTHER ORDERED that a hearing shall be held on the 11 day of September, 2019, at 9:30 o'clock a.m., and Defendant shall show cause as to:

- Why said records should not be produced as requested, and why the alternative writ of mandamus issued by this Order shall not be made peremptory and permanent;
- Why Defendant should not be taxed with costs and attorneys' fees, as permitted by law, and all other equitable and just relief as may be permitted by law.

Baton Rouge, Louisiana, this 4th day of September, 2019.


JUDGE

Judge Trudy M. White

PLEASE HOLD SERVICE PENDING WAIVER:

The Hon. Jay Dardenne
Commissioner of Administration
1201 N. Third St., Suite 7-210
Baton Rouge, LA 70802

NON-CERTIFIED COPY