

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

VALIAN WALKER MONTGOMERY,
COURTNEY THOMPSON, TRACEY
JORDAN, AND JANINA RILEY,

Plaintiffs,

v.

MCKEESPORT CITY COUNCIL AND
THE CITY OF MCKEESPORT,

Defendants.

CIVIL DIVISION

G.D. No. 21-1723

VERIFIED COMPLAINT

Filed on behalf of Plaintiffs, Valian
Walker Montgomery, Courtney
Thompkins, Tracey Jordan, and Janina
Riley

Counsel of Record for these Parties:

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FILED

2021 MAR -1 PM 4:00

DEPT. OF COURT RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

VALIAN WALKER MONTGOMERY,)	CIVIL DIVISION
COURTNEY THOMPSON, TRACEY)	
JORDAN, AND JANINA RILEY,)	
)	G.D. No. _____
)	
Plaintiffs,)	
)	
v.)	
)	
MCKEESPORT CITY COUNCIL AND)	
THE CITY OF MCKEESPORT,)	
)	
Defendants.)	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you.

You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU SHOULD NOT HAVE A LAWYER, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Lawyer Referral Service
Allegheny County Bar Association
902 City-County Building
Pittsburgh, PA 15219
412-261-0518**



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

VALIAN WALKER MONTGOMERY,)
COURTNEY THOMPkins, TRACEY)
JORDAN, AND JANINA RILEY,)
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Plaintiffs,)
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v.)
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MCKEESPORT CITY COUNCIL AND)
THE CITY OF MCKEESPORT.)

CIVIL DIVISION
G.D. No. _____

Defendants.

VERIFIED COMPLAINT

Plaintiffs, Valian Walker Montgomery, Courtney Thompkins, Tracey Jordan, and Janina Riley, (the “McKeesport Citizens”), by and through their undersigned attorneys, file this Complaint, averring as follows:

Parties

1. Plaintiff Valian Walker Montgomery is an adult individual who resides in McKeesport in Allegheny County, Pennsylvania.
2. Plaintiff Courtney Thompkins is an adult individual who resides in McKeesport in Allegheny County, Pennsylvania.
3. Plaintiff Tracey Jordan is an adult individual who resides in McKeesport in Allegheny County, Pennsylvania.
4. Plaintiff Janina Riley is an adult individual who resides in McKeesport in Allegheny County, Pennsylvania.
5. Defendant McKeesport City Council (“City Council”) is the government entity entrusted with governing the city of McKeesport in Allegheny County, Pennsylvania.

6. Defendant City of McKeesport (the “City”) is a City located in Allegheny County, Pennsylvania.

7. The City’s Mayor is Michael Cherepko.

Jurisdiction

8. City Council is a government entity formed under the laws of the Commonwealth of Pennsylvania.

9. City Council carries on continuous and systematic operations within the Commonwealth of Pennsylvania.

10. The City is located in the Commonwealth of Pennsylvania, and more specifically in Allegheny County.

11. Accordingly, the courts of the Commonwealth of Pennsylvania, and this court in particular, have personal jurisdiction over City Council. 42 Pa. C.S. §§ 5301(a)(3)(i); (iii).

12. The Court of Common Pleas has subject matter jurisdiction over the claims set forth in this Complaint. 42 Pa. C.S. § 931(a) and 65 Pa.C.S. § 715.

Venue

13. City Council’s chambers are located at 500 5th Avenue, McKeesport, Pennsylvania 15132 in Allegheny County, Pennsylvania.

14. The City’s Mayor’s office is also located at 500 5th Avenue, McKeesport, Pennsylvania 15132 in Allegheny County, Pennsylvania.

15. Rule 2103 of the Pennsylvania Rules of Civil Procedure provides in relevant part that “an action against a political subdivision may be brought only in the county in which the political subdivision is located.”

16. Thus, the Court of Common Pleas of Allegheny County is the only appropriate venue for hearing the claims set forth in this Complaint.

Factual Background

17. On or about December 20, 2020, a McKeesport police officer was allegedly shot by an individual in handcuffs.

18. Upon information and belief, McKeesport police were joined by several other local, as well as state, county and federal law enforcement agencies, in searching McKeesport and surrounding areas to locate the suspected shooter.

19. The resulting “manhunt” led to complaints from concerned citizens and others of multiple civil rights abuses as law enforcement performed, according to the complaints, unconstitutional searches and seizures of individuals, their vehicles, and their homes.

20. As a result, a local community organization, Take Action Mon Valley (“TAMV”), issued a call to action encouraging residents to address the unlawful searches conducted during the manhunt at the January 6, 2021, Council meeting (the “January Meeting”).

21. Heeding TAMV’s call, numerous McKeesport Citizens planned to attend and present comments at the January Meeting.

22. Leading up to the January Meeting, including the day of the meeting, the McKeesport Citizens continuously checked City Council’s website and Facebook page for information regarding the January Meeting.

23. The website provided Council’s agenda for the January Meeting, noted the date and time of the meeting, and noted that citizens would be included in the audience.

24. As of 6:30 p.m. the day of the January Meeting, the City Council’s website and Facebook page both indicated that the meeting was to be held at Council Chambers.

25. Prior to the start of the 7:00 PM meeting, the McKeesport Citizens and other individuals arrived at Council Chambers.

26. Upon arrival at Council Chambers, the McKeesport Citizens found that the doors to Council Chambers were locked.

27. Thus, the McKeesport Citizens – along with the general public – were prevented from attending the City Council meeting.

28. Posted on the locked door of Council Chambers was a sign stating that the meeting was “closed to ‘in-person’ public participation...in light of COVID-19.”

29. The only mechanism for public comment provided for in the new COVID-19 procedures was an option for written submissions, the deadline for which was noon that day, which had already passed.

30. Prior to the events of December 20, 2020, including during the preceding nine months of the COVID-19 pandemic, every McKeesport City Council meeting was open to the public and allowed for live and direct public comment.

31. Although the pandemic has created difficulties for government bodies subject to the Sunshine Act across the Commonwealth, countless other government agencies across the Commonwealth, including those in McKeesport such as the McKeesport school board, were able to provide at least electronic access through Zoom or other videoconferencing technology to fulfill transparency and participation requirements for citizens and the media.

32. On January 22, 2021, the ACLU of Pennsylvania sent a letter on behalf of the McKeesport Citizens and other McKeesport residents requesting that the McKeesport City Council President and the mayor honor their obligations under the Sunshine Act to provide participation, “either in person utilizing necessary COVID-19 safety precautions or virtually by using an

Internet-based streaming platform,” and make better provision for public comment at the upcoming Council meeting on February 3, 2021.

33. Subsequently, the McKeesport Mayor, Michael Cherepko, and City Solicitor J. Jason Elash contacted an ACLU representative and indicated that City Council would provide the ACLU with a plan for including the public for the next Council Meeting scheduled for February 3, 2021.

34. No plan was ever provided, either to the ACLU confidentially or announced publicly to the residents. Instead, City Council canceled the February 3, 2021, meeting, claiming they had no business to discuss.

35. Per the City Council website, the next City Council meeting is scheduled for 7:00 PM, March 3, 2021, at Council Chambers. The website provides no indication that the public may attend and/or participate either in-person or virtually.

36. Per the City Council website, “Any person who desires to present public comment to City Council for the March meeting are [sic] asked to submit a written statment [sic] to the Mayor's Office, 500 Fifth Avenue, by noon on March 3, by dropping it off in person or via email to jen.vertullo@mckeesport-pa.gov.”

37. Undersigned counsel has in the past two weeks sent several emails to the City Solicitor asking whether and how Council will address McKeesport Citizens’ concern that they will be denied access to observe and publicly comment at the March 3, 2021, meeting.

38. The City Solicitor has neither acknowledged nor responded to these emails.

COUNT I – Violation of the Pennsylvania Sunshine Act

39. Paragraphs 1 through 40 of this Complaint are incorporated as though set forth fully herein.

40. Pennsylvania's Sunshine Act requires all "[o]fficial action and deliberations by a quorum of the member of an agency," such as City Council, "shall take place at a meeting open to the public." 65 P.S. § 704.

41. The Sunshine Act further requires that agencies such as City Council "provide a reasonable opportunity at each advertised regular meeting . . . for resident . . . or taxpayers . . . to comment on matters of concern, official action, or deliberation which are or may be before the . . . council prior to taking official action." 65 P.S. § 710.1(a).

42. Willful violation of the Sunshine Act entitle litigants to attorney's fees for a civil lawsuit. 65 P.S. § 714.

43. In the face of the COVID-19 pandemic, Act 15 of 2020 clarified that local government agencies must still "allow for public participation in a meeting, hearing or proceeding through an authorized telecommunications device¹ or written comments." 35 Pa.C.S. § 5741(f).

44. Plaintiffs planned to participate in the January Meeting to voice concerns over unlawful searches of McKeesport residents.

45. Plaintiffs were unable to participate in the January Meeting because Council did not allow for the public to witness the January Meeting, either in person or through an authorized telecommunications device.

46. Plaintiffs were further unable to participate in the January Meeting because City Council provided notice too late to allow McKeesport Citizens to submit written comments.

47. City Council has ignored attempts by undersigned counsel to engage in a dialogue regarding the alleged Sunshine Act violations at the January Meeting and how to provide for legally required public access at future Council meetings.

¹ "Authorized telecommunications device" is defined as "any device which permits, at a minimum, audio communication between individuals." 35 Pa.C.S. § 5741.

48. McKeesport Plaintiffs still wish to attend McKeesport Council's future meetings and present comments, including being able to react to what Council members say during the session, about the Police Department's treatment of citizens during the December 20 manhunt and other matters of public concern.

49. As such, Defendants have violated, and will continue to violate, the Sunshine Act by foreclosing the public from meaningfully participating in government operations.

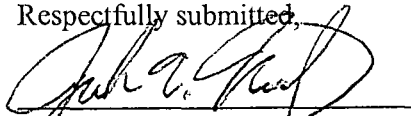
50. Defendants' denial of meaningful participation to McKeesport Citizens and other members of the public is irreparable harm for which there is no adequate remedy at law.

51. Additionally, as stated further in the accompanying moving papers, McKeesport Citizens further move for mandatory injunctive relief to ensure that they have meaningful access to upcoming City Council meetings, including the one slated to occur on March 3, 2021.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and against City Council, including the award of attorneys' fees, and grant such other and further relief as this Court deems just and proper.

Dated: March 1, 2021

Respectfully submitted,



Charles Kelly (PA ID 51942)
Michael Joyce, Esq. (PA ID. 311303)
Allison Burdette, Esq. (PA ID 316695)
John A. Marty, Esq. (PA ID 324405)
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Tel: (412) 681 7736
Fax (412) 681 8707

Counsel for Plaintiffs

VERIFICATION

I verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated: March 1, 2021

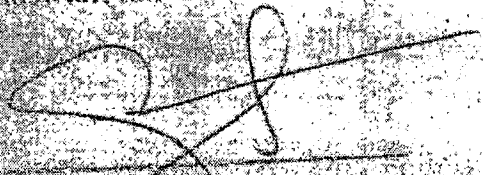
Valian Walker Montgomery

Valian Walker Montgomery

VERIFICATION

I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 P.S. § 4904 relating to unsworn falsification to authorities.

Date: February 26, 2002



Courtney Thompkins

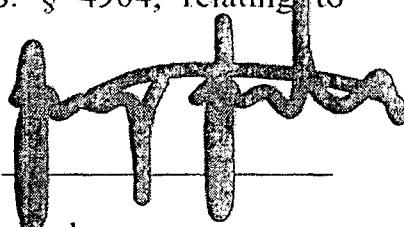
2/26/2002

VERIFICATION

I verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated:

3.1.21

A handwritten signature in black ink, appearing to read 'Tracey Jordan', written over a horizontal line.

Tracey Jordan

VERIFICATION

I verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

Dated:
3/1/2021 _____

____ Janina Riley

Janina Riley

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2021, I served a true and correct copy of the foregoing Verified Complaint via electronic mail and First Class United States mail, postage prepaid upon the following:

Jason Elash
McKeesport City Solicitor
500 Fifth Avenue
McKeesport, PA 15132



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Pa ID No. 324405
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John.Marty@saul.com

**CERTIFICATION OF COMPLIANCE WITH
CASE RECORDS PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Case Records Public Access Policy* of the *Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

March 1, 2021



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Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet



County _____

For Prothonotary Use Only:

Docket No: _____

FILED

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION

Commencement of Action:

- Complaint
- Writ of Summons
- Petition
- Transfer from Another Jurisdiction
- Declaration of Taking

Lead Plaintiff's Name: John Marty

Lead Defendant's Name: _____

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a Class Action Suit? Yes No

Is this an MDJ Appeal? Yes No

A

Name of Plaintiff/Appellant's Attorney: _____

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION

B

Nature of the Case:

Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
- Malicious Prosecution
- Motor Vehicle
- Nuisance
- Premises Liability
- Product Liability (does not include mass tort)
- Slander/Libel/ Defamation
- Other: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
- Debt Collection: Credit Card
- Debt Collection: Other _____
- Employment Dispute: Discrimination _____
- Employment Dispute: Other _____
- Other: _____

CIVIL APPEALS

- Administrative Agencies
- Board of Assessment
 - Board of Elections
 - Dept. of Transportation
 - Statutory Appeal: Other _____
- Zoning Board
- Other: _____

MASS TORT

- Asbestos
- Tobacco
- Toxic Tort - DES
- Toxic Tort - Implant
- Toxic Waste
- Other: _____

REAL PROPERTY

- Ejectment
- Eminent Domain/Condemnation
- Ground Rent
- Landlord/Tenant Dispute
- Mortgage Foreclosure: Residential
- Mortgage Foreclosure: Commercial
- Partition
- Quiet Title
- Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
- Declaratory Judgment
- Mandamus
- Non-Domestic Relations Restraining Order
- Quo Warranto
- Replevin
- Other: _____

PROFESSIONAL LIABILITY

- Dental
- Legal
- Medical
- Other Professional: _____