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JAN 27 2022

**SUPERIOR COURT OF NJ
MERCER VICINAGE
CHANCERY**

BROWN & CONNERY, LLP

William M. Tambussi, Esq. (ID No. 031431983)

Michael J. Miles, Esq. (ID No. 024862005)

Carmen Y. Day, Esq. (ID No. 318322020)

360 Haddon Avenue

P.O. Box 539

Westmont, New Jersey 08108

(856) 854-8900

Attorneys for Plaintiff

STEPHEN M. SWEENEY, in his individual
capacity and his official capacity as a
Member of the New Jersey Apportionment
Commission,

Plaintiff,

vs.

LEROY J. JONES, JR., in his official capacity
as Chair of the New Jersey Democratic State
Committee, Co-Chair and Member of the New
Jersey Apportionment Commission, and in his
individual capacity, LAURA MATOS, in her
individual capacity, NEW JERSEY
APPORTIONMENT COMMISSION, and
TAHESHA WAY, in her official capacity as
New Jersey Secretary of State,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY

DOCKET NO.: C-7-22

Civil Action

VERIFIED COMPLAINT

Plaintiff, by way of his Verified Complaint, hereby states as follows:

INTRODUCTION

1. This action challenges the unilateral and unlawful removal of Plaintiff, Stephen M. Sweeney ("Sweeney"), from his constitutionally appointed position as a member of the New Jersey Apportionment Commission by Defendant, LeRoy J. Jones, Jr. ("Jones").

PARTIES

2. Sweeney, an individual residing in the Township of West Deptford, Gloucester County, New Jersey, was constitutionally appointed as a Democratic member of the New Jersey Apportionment Commission in November 2020.

3. Jones, an individual residing in East Orange, Essex County, New Jersey, is Chair of the New Jersey Democratic State Committee (the “State Party”) and Co-Chair and Member of the New Jersey Apportionment Commission.

4. Defendant, Laura Matos (“Matos”), an individual residing in Belmar, Monmouth County, New Jersey, was unlawfully appointed by Jones to replace Sweeney as a Democratic member of the New Jersey Apportionment Commission.

5. Defendant, New Jersey Apportionment Commission (the “Commission”), is a body established pursuant to Article IV, Section III of the New Jersey Constitution, and maintains its headquarters in Trenton, Mercer County, New Jersey.

6. Defendant, Tahesha Way (the “Secretary”), is the Acting Secretary of State of New Jersey, who is named in her official capacity only, and maintains an office in Trenton, Mercer County, New Jersey

JURISDICTION AND VENUE

7. Under R. 4:3-1(a)(1), jurisdiction is proper in this Court since the principal relief sought in this matter is equitable in nature.

8. Under R. 4:3-2, venue is proper in Mercer County because the conduct giving rise to this action took place in Mercer County, and the Commission conducts business in Mercer County.

STATEMENT OF FACTS

9. The New Jersey Constitution provides that after every decennial census of the United States, “the Senate districts and Assembly districts shall be established, and the senators and members of the General Assembly shall be apportioned among them.” N.J. Const. Art. 4, § 3, ¶ 1.

10. This work is to be done “by an Apportionment Commission consisting of ten members, five to be appointed by the chairman of the State committee of each of the two political parties whose candidates for Governor receive the largest number of votes at the most recent gubernatorial election.” Id.

11. “Each State chairman, in making such appointments, shall give due consideration to the representation of the various geographical areas of the State.” Id.

12. “Appointments to the Commission shall be made on or before November 15 of the year in which such census is taken and shall be certified by the Secretary of State on or before December 1 of that year.” Id.

13. The New Jersey Constitution does not provide for the removal of a member of the Commission once appointed.

14. Further, the New Jersey Constitution does not permit the appointment or certification of a member of the Commission beyond the constitutional deadlines.

15. On or before November 15, 2020, Sweeney was appointed to be a Democratic Member of the Commission, pursuant to the terms of Article 4, Section 3 of the New Jersey Constitution.

16. On or before December 1, 2020, Sweeney’s appointment was certified by the Secretary of State, pursuant to the terms of Article 4, Section 3 of the New Jersey Constitution.

17. On or before November 15, 2020, the following individuals were also appointed to be Democratic Members of the Commission: Jones (who resides in Essex County), Cosmo Cirillo (who resides in West New York, Hudson County), Gary Taffet (who resides in East Brunswick, Middlesex County), and Diane T. Tedta (who resides in Fairview, Bergen County).

18. All were timely certified by the Secretary of State.

19. Sweeney was the only Democratic Member who resides in one of the eight counties comprising southern New Jersey.

20. Members of the Commission appointed by the Democratic State Chairman, in consideration of their appointment to Commission, are required to sign an agreement (the “Agreement”) setting forth certain terms and conditions.

21. Sweeney entered into the Agreement with the Democratic State Chairman, effective November 15, 2020. (See Exhibit A.)

22. The Agreement provides, in relevant part, “I understand and agree that I have been appointed by the Democratic State Chairman based on the representation that I will fully adhere to the terms and conditions of the provisions of this Agreement and that any violation of this Agreement will result in my immediate removal from the Commission without further recourse, hearing, or appeal by the execution of this Agreement.” (Id.)

23. The Agreement does not permit removal from the Commission in the absence of a violation of its terms.

24. Sweeney has complied with all terms of the Agreement at all times.

25. The Commission adopted the New Jersey Apportionment Commission By-Laws and Rules (the “By-Laws”) on October 15, 2021 and amended those By-Laws on November 6, 2021. (See Exhibit B.)

26. The Commission By-Laws do not provide for the removal of a member of the Commission once appointed. (Id.)

27. With Sweeney as a member, the Commission has conducted weekly calls, undertaken numerous public hearings, and completed a substantial portion of their work to formulate legislative district maps.

28. With the Commission's work drawing to the finish, proposed maps were scheduled to be presented to the eleventh member of the Commission for evaluation on or before February 3, 2022.

29. On January 26, 2022, Jones filed a letter with the Secretary of State purporting to remove Sweeney as a member of the Commission. (See Exhibit C.)

30. Jones requested that the Secretary of State certify Matos (who resides in Monmouth County) to replace Sweeney. (Id.)

31. On January 26, 2022, the Secretary of State certified Matos to be a member of the Commission. (See Exhibit D.)

32. As a result, the Commission does not have a single Democratic Member who resides in one of the eight counties comprising southern New Jersey.

33. The constitutional deadline for the Commission to certify the results of its work is March 1, 2022, see N.J. Const. Art. 4, § 3, ¶ 4, making the necessity of relief in this matter both time sensitive and urgent.

COUNT I

Violation of New Jersey Constitution

34. Sweeney hereby incorporates paragraph 1 - 29 above as if set forth at length herein.

35. Sweeney was a duly appointed member of the Commission.

36. Sweeney performed at all times in good faith and conformance with his constitutional obligations.

37. Jones and the Commission improperly removed Sweeney from his position as a member of the Commission in violation of the New Jersey Constitution.

38. Way improperly approved the removal of Sweeney from his position as a member of the Commission in violation of the New Jersey Constitution.

39. Jones and the Commission improperly appointed Matos to be a member of the Commission after the deadline for appointments in violation of the New Jersey Constitution.

40. Jones and the Commission improperly appointed Matos to be a member of the Commission without due consideration to the representation of southern New Jersey among the membership of the Commission in violation of the New Jersey Constitution.

41. Way improperly certified the appointment of Matos to be a member of the Commission after the deadline for certifying appointments in violation of the New Jersey Constitution.

42. Matos improperly accepted appointment to be a member of the Commission in violation of the New Jersey Constitution.

WHEREFORE, Sweeney seeks equitable relief: (a) vacating the actions of Jones to unilaterally remove Sweeney without cause as a member of the Commission; (b) vacating the actions by the Secretary of State in certifying Matos as a member of the Commission; (c) enjoining the Commission from taking further action until Sweeney is reinstated as a member of the Commission; (d) reinstating Sweeney as a member of the Commission; and (e) all other relief deemed equitable and just by the Court including, but not limited to, attorneys' fees and costs.

COUNT II

Breach of Contract

43. Sweeney hereby incorporates paragraph 1 - 38 above as if set forth at length herein.

44. The Agreement constitutes a binding and enforceable contract between Sweeney and Jones, in his official capacity as Chairman of the State Party.

45. Sweeney has complied with the terms of the Agreement at all applicable times.

46. Sweeney fulfilled all duties and obligations as a member of the Commission from the time of his appointment to the Commission until his removal without cause or authority by Jones.

47. The actions by Jones to remove Sweeney from membership on the Commission without cause is a breach of the Agreement.

48. As a result, Sweeney has suffered and continues to suffer irreparable harm.

WHEREFORE, Sweeney seeks equitable relief: (a) vacating the actions of Jones to unilaterally remove Sweeney without cause as a member of the Commission; (b) vacating the actions by the Secretary of State in certifying Matos as a member of the Commission; (c) enjoining the Commission from taking further action until Sweeney is reinstated as a member of the Commission; (d) reinstating Sweeney as a member of the Commission and (e) all other relief deemed appropriate by the Court including, but not limited to, attorneys' fees and costs.

BROWN & CONNERY, LLP

Attorneys for Plaintiff

By: s/William M. Tambussi

William M. Tambussi

Michael M. Miles

Carmen Y. Day

Dated: January 27, 2022

DESIGNATION OF TRIAL COUNSEL

William M. Tambussi, Esq. is hereby designated as trial counsel in this matter.

BROWN & CONNERY, LLP
Attorneys for Plaintiff

By: s/William M. Tambussi
William M. Tambussi
Michael M. Miles
Carmen Y. Day

Dated: January 27, 2022

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding, and no such action is contemplated. I know of no other parties that should be made part of this lawsuit. I certify that the within Verified Complaint was served within the time prescribed by the Court Rules. I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BROWN & CONNERY, LLP
Attorneys for Plaintiff

By: s/William M. Tambussi
William M. Tambussi
Michael M. Miles
Carmen Y. Day

Dated: January 27, 2022

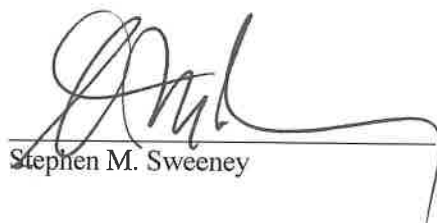
VERIFICATION

I, Stephen M. Sweeney, hereby certify as follows:

1. I am the Plaintiff in the foregoing matter.
2. I have read the contents of the Verified Complaint and exhibits thereto, and incorporate the same by reference herein, and state that they are true to the best of my knowledge, information and belief.

I am aware that if the foregoing statements by me are willfully false, I am subject to punishment.

Dated: January 27, 2022



Stephen M. Sweeney

EXHIBIT A

New Jersey Apportionment Commission

Members of the Commission Appointed by the Democratic State Chairman

In consideration of my appointment to the New Jersey Apportionment Commission, I agree as follows:

1. I understand and agree that the New Jersey Apportionment Commission (Commission) is established and operates under Article IV, Section III, paragraphs 1 through 4 of the New Jersey Constitution as amended by the voters on November 3, 2020; and
2. I understand and agree that I will not be compensated for my service as a member of the Commission; and
3. I understand and agree that I will not accept from any person or company, whether directly or indirectly and whether by myself or through my spouse, family member, or any partner or associate, any gift, favor, service, employment or offer of employment or any thing of value that I know, or have reason to believe, is offered to me with the intent to influence me in my capacity as a member of the Commission;
4. I understand and agree that the full Commission, consistent with past practice, will adopt Rules that will govern *inter alia* the organization and operation of the Commission; budget; voting and quorum; public hearings; and the certification and establishment of legislative districts; and
5. I understand and agree that the Chairman of the Democratic State Committee will designate the Chair of the delegation of the Democratic members appointed to the Commission; and
6. I understand and agree that the delegation of Democratic members appointed to the Commission, consistent with past practice, will adopt its own Rules that will govern *inter alia* the sharing of internal discussions and strategy; confidential information of the Commission; staffing; and public comments relating to official Commission affairs and deliberations; and
7. I also understand and agree that, consistent with past practice, the delegation of Democratic members appointed to the Commission at all times will cast its entire vote as a unit as determined by majority vote, including but not limited to the final vote for certification and establishment of legislative districts; and
8. I understand and agree that I have been appointed by the Democratic State Chairman based on the representation that I will fully adhere to the terms and conditions of the provisions of this Agreement and that any violation of this Agreement will result in my immediate removal from the Commission without further recourse, hearing, or appeal by the execution of this

Agreement.

In WITNESS WHEREOF, the parties hereto agree to all of the terms and conditions set forth herein as of November 15th, 2020 and throughout the entirety of the work of the Commission.

By:

Stephen R Sweeney

Democratic Member Appointed to the New Jersey Apportionment Commission

By:

New Jersey State Democratic Chairman

EXHIBIT B

CONSTITUTION & BY-LAWS

New Jersey Constitutional Provisions on Legislative Redistricting

NEW JERSEY STATE CONSTITUTION 1947

(UPDATED THROUGH AMENDMENTS ADOPTED IN NOVEMBER, 2020)

ARTICLE IV

LEGISLATIVE

SECTION II*

1. The Senate shall be composed of forty senators apportioned among Senate districts as nearly as may be according to the number of their inhabitants as reported in the last preceding decennial census of the United States and according to the method of equal proportions. Each Senate district shall be composed, wherever practicable, of one single county, and, if not so practicable, of two or more contiguous whole counties.
2. Each senator shall be elected by the legally qualified voters of the Senate district, except that if the Senate district is composed of two or more counties and two senators are apportioned to the district, one senator shall be elected by the legally qualified voters of each Assembly district. Each senator shall be elected for a term beginning at noon of the second Tuesday in January next following his election and ending at noon of the second Tuesday in January four years thereafter, except that each senator, to be elected for a term beginning in January of the second year following the year in which a decennial census of the United States is taken, shall be elected for a term of two years.
3. The General Assembly shall be composed of eighty members. Each Senate district to which only one senator is apportioned shall constitute an Assembly district. Each of the remaining Senate districts shall be divided into Assembly districts equal in number to the number of senators apportioned to the Senate district. The Assembly districts shall be composed of contiguous territory, as nearly compact and equal in the number of their inhabitants as possible, and in no event shall each such district contain less than eighty per cent nor more than one hundred twenty per cent of one-fortieth of the total number of inhabitants of the State as reported in the last preceding decennial census of the United States. Unless necessary to meet the foregoing requirements, no county or municipality shall be divided among Assembly districts unless it shall contain more than one-fortieth of the total number of inhabitants of the State, and no county or municipality shall be divided among a number of Assembly districts larger than one plus the whole number obtained by dividing the number of inhabitants in the county or municipality by one-fortieth of the total number of inhabitants of the State.
4. Two members of the General Assembly shall be elected by the legally qualified voters of each Assembly district for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter.

(cf: Article IV, Section II, paragraphs 1, 2, 3, 4 amended effective December 8, 1966)

* Please note that various provisions of Section II have been modified by subsequent court rulings. Currently, there are 40 legislative districts, with one senator and two members of the General Assembly elected from each district.

SECTION III

1. After the next and every subsequent decennial census of the United States, the Senate districts and Assembly districts shall be established, and the senators and members of the General Assembly shall be apportioned

among them, by an Apportionment Commission consisting of ten members, five to be appointed by the chairman of the State committee of each of the two political parties whose candidates for Governor receive the largest number of votes at the most recent gubernatorial election. Each State chairman, in making such appointments, shall give due consideration to the representation of the various geographical areas of the State. Appointments to the Commission shall be made on or before November 15 of the year in which such census is taken and shall be certified by the Secretary of State on or before December 1 of that year. The Commission, by a majority of the whole number of its members, shall certify the establishment of Senate and Assembly districts and the apportionment of senators and members of the General Assembly to the Secretary of State within one month of the receipt by the Governor of the official decennial census of the United States for New Jersey, or on or before February 1 of the year following the year in which the census is taken, whichever date is later.

2. If the Apportionment Commission fails so to certify such establishment and apportionment to the Secretary of State on or before the date fixed or if prior thereto it determines that it will be unable so to do, it shall so certify to the Chief Justice of the Supreme Court of New Jersey and he shall appoint an eleventh member of the Commission. The Commission so constituted, by a majority of the whole number of its members, shall, within one month after the appointment of such eleventh member, certify to the Secretary of State the establishment of Senate and Assembly districts and the apportionment of senators and members of the General Assembly.

3. Such establishment and apportionment shall be used thereafter for the election of members of the Legislature and shall remain unaltered until the following decennial census of the United States for New Jersey shall have been received by the Governor.

(cf: Article IV, Section III, paragraphs 1, 2, 3 amended effective December 8, 1966)

4. Notwithstanding the provisions of paragraphs 1, 2, and 3 of this Section III, when the receipt by the Governor of the official decennial census of the United States for New Jersey occurs after February 15 of the year ending in one, following the year in which the census is taken, the commission shall certify the establishment of Senate and Assembly districts and the apportionment of Senators and members of the General Assembly to the Secretary of State after the November general election of that year ending in one, but not later than March 1 of the year ending in two. The commission shall begin conducting its business upon the receipt by the Governor of the official decennial census of the United States for New Jersey, and the eleventh member of the commission shall be appointed by the Chief Justice of the Supreme Court of New Jersey within one month of the Governor's receipt of that census data. Such establishment and apportionment shall be used for the election of members of the Senate and General Assembly beginning with elections conducted in the year ending in three, and elections thereafter, and shall remain unaltered until the following decennial census of the United States for New Jersey shall have been received by the Governor.

The Senate and Assembly districts certified to the Secretary of State by the previous Apportionment Commission for the previous decade shall remain in effect in that year ending in one and in the year ending in two, and shall be used for legislative elections in those years.

For the election of members of the Senate and General Assembly occurring in November of that year ending in one, members shall be elected by the legally qualified voters of their district as drawn by the previous Apportionment Commission for the previous decade, for terms beginning at noon of the second Tuesday in January next following their election and ending at noon of the second Tuesday in January two years thereafter.

(cf: Article IV, Section III, paragraph 4, added effective December 3, 2020)

Apportionment Commission By-Laws

NEW JERSEY APPORTIONMENT COMMISSION RULES

Adopted on October 15, 2021

(UPDATED THROUGH AMENDMENTS ADOPTED ON NOVEMBER 6, 2021)

Article I - Mandate

The New Jersey Apportionment Commission (the "Commission") is established and operates according to the mandate set forth in Article IV, Section III, paragraphs 1 through 3 of the New Jersey Constitution.

Article II - Organization and Operation

1. The Commission shall adopt Robert's Rules of Order Revised (12th Ed.) and shall organize and operate under Robert's Rules of Order Revised, as standard authority, when not in conflict with its constitutional mandate or these rules.

2. One Co-Chairperson shall be designated from among the Commissioners of each delegation by the Commissioners of each delegation. The Co-Chairpersons so elected shall have the power to act on behalf of their respective Commissioners with respect to such items as may be deemed necessary or expedient by a unanimous vote of said partisan Commissioners.

3. The Co-Chairpersons so selected shall alternate presiding at alternate meetings/hearings of the Commission.

a. Official Meetings. After the presiding officer has taken the Chair to preside over an official meeting, the order of business shall be as follows:

- i. Call to Order;
- ii. Adoption of the minutes of the previous meeting by a vote by a majority of the members present unless the previous meeting was recorded or transcribed;
- iii. If applicable, reading of the minutes of the previous meeting may be waived by a majority vote of the members present;
- iv. Reading of any correspondence or a summary of correspondence by the Secretary to the Commission unless dispensed with by a vote of a majority of the members present;
- v. Old Business;
- vi. New Business; and
- vii. Motion to adjourn.

b. Public Hearings. After the presiding officer has taken the Chair to preside over an official hearing, the order of business shall be as follows:

- i. Call to Order;
- ii. Introduction by the Chair;
- iii. Public Testimony/Comment; and
- iv. Motion to adjourn.

4. One Vice Co-Chairperson may be designated from among the Commissioners of each delegation by the Commissioners of each delegation. Each Vice Co-Chairperson shall act in the place and stead of the Co-

Chairperson of his/her party in the absence of that Co-Chairperson.

5. The Co-Chairperson of each delegation, after consultation with the Commissioners of that delegation, shall designate their delegation's Legal Counsel and such other consultants and staff as they deem necessary. The Co-Chairperson of each delegation shall notify their counterpart of his or her delegation's selections.

6. No member of the Commission may serve as a staff member to the Commission.

Article III - Vacancies in Membership

In the event a vacancy in the membership of the Commission occurring prior to the certification by the Commission of legislative districts or during any period in which the legislative districts established by the Commission may be or are under challenge in the Courts of this State or the United States, the vacancy shall be filled within five days of the occurrence of the vacancy, in the same manner as the original appointment of the person whose position became vacant.

Article IV - Commission Budget

1. The appropriation of funds made available to the Commission as authorized by the FY 2022 Appropriations Act shall be allocated to (a) the Common Fund of the Commission to carry out the Commission's common responsibilities; (b) to each of the two delegations; and (c) to the Eleventh Member to carry out his responsibilities.

2. Each Co-Chairperson shall be authorized to approve payments from the fund allocated to his/her respective delegation, and both Co-Chairpersons are empowered to jointly authorize expenditures from the common fund on behalf of the Commission and shall approve every expenditure and sign all necessary vouchers for common services and expenses of the Commission. The Eleventh member shall be authorized to sign vouchers for the fund allocated to his/her use.

Article V - Voting and Quorum

1. Six members of the Commission who are present shall constitute a quorum sufficient to transact business. Meetings may be held physically, virtually or telephonically.

2. A schedule and agenda of meetings of the Commission shall be jointly agreed to by the Co-Chairs of the Commission or at the request of six Commissioners.

3. Six affirmative votes by the Commissioners present at any meeting at which there is a quorum shall be required for any action taken by the Commission.

4. Notice of any meeting shall be given and shall include a statement of time, date, place and subject matter of the meeting. Notice shall be given by the Co-chairs to Commissioners at least 48 hours in advance of such meeting. Notice may be given either in writing, electronic mail or telephonically. The notice requirement provided above can be waived by six affirmative votes of the Commissioners, which may be cast by telephonic means.

5. Pursuant to N.J.S.A. 10:4-8, meetings of the Commission are not subject to the Open Public Meetings Act.

6. Members of the public may be permitted to speak at public hearings of the Commission only upon being recognized by the Chair.

Article VI - Official Meetings/Public Hearings

1. The Commission shall hold at least ten (10) official meetings/public hearings.
2. At least one Public Hearing will be held in each of the northern, southern and central parts of the State. The Commission shall determine the location where such public hearings are located and which part of the state (northern, southern, or central) such meeting is designated as serving.
3. Official Meetings and Public Hearings may take place via an electronic video meeting system. The Commission may, subject to the constraints of time and convenience, review written plans for the establishment of legislative districts submitted by members of the general public.
4. The Co-Chairpersons of the Commission shall direct the Secretary to the Commission to arrange for a Certified Court Reporter or a reporter from the Hearing Reporter Unit of the Office of Legislative Services to be present at public hearings of the Commission or to review recordings of public hearings held via an electronic video meeting system and said reporter shall transcribe full proceedings of said public hearing. A typewritten transcript of the public hearings shall be prepared as soon as possible after such hearings and shall be available to the Commissioners. Such transcripts will be posted on the Commission's website for review by the public.

(Article VI, paragraph 4, amended effective November 6, 2021)

5. The certified transcript of the above public hearings prepared by the Certified Court Reporter shall become part of the official records of the Commission and shall be submitted to the Secretary of State with other official records of the Commission, if any, when the Commission terminates its business.

Article VII - Certification of Establishment of Districts

The Commission shall certify the establishment of legislative districts upon a vote of six members of the Commission. The certification of legislative districts shall be signed by all the Commissioners who cast the votes approving the legislative district plan and the certification thereof.

Article VIII - Report to the Legislature

Before terminating its business, the Commission may submit to the Legislature any recommendations for modifying or amending existing statutes or the State Constitution by a vote of seven members of the Commission.

[FAQ](#) | [Sign Up](#)

New Jersey Legislative Apportionment Commission

If you would like to contact the Apportionment Commission, you may do so through email and regular mail.

To Email Us, [CLICK HERE](#)

Regular Mail

*Raysa Martinez Kruger, Secretary
Apportionment Commission
c/o Office of Legislative Services
P.O. Box 068
Trenton, NJ 08625-0068*

EXHIBIT C



THE DEMOCRATIC PARTY OF NEW JERSEY

January 26, 2022

Honorable Tahesha Way
Secretary of State
20 West State St., 4th Floor
Trenton, New Jersey 08625

Re: NJ Democratic State Committee Appointment to Apportionment Commission

Dear Secretary Way:

As you know, I am the Chair of the New Jersey Democratic State Committee and write regarding our party's appointments to the New Jersey Apportionment Commission.

Article IV, Section III of the New Jersey Constitution and the bylaws adopted by the New Jersey Apportionment Commission authorize the Chair of each political party to select and replace up to 5 commission members. The Chair's authority is plenary, provided that "[e]ach State chairman, in making such appointments, shall give due consideration to the representation of the various geographical areas of the State."

Today, in my capacity as State Party chair, I am removing Stephen Sweeney as a Commission member. To fill this vacancy, after due consideration to geographic representation, I submit Laura Matos of Belmar to you for certification as a Commissioner consistent with Article III of the Apportionment Commission's bylaws. Kindly consider this letter as confirmation of my appointment.

Respectfully,

LeRoy J. Jones, Jr.
Chair, New Jersey Democratic State Committee

cc: Saily Avelenda, Executive Director
Raysa Kruger-Martinez, Secretary, New Jersey Apportionment Commission

Paid for by the New Jersey Democratic State Committee
196 West State Street
Trenton, New Jersey 08608

EXHIBIT D

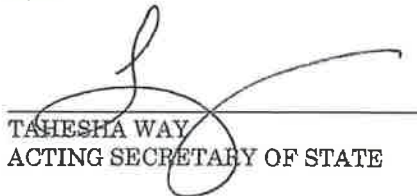


I, **TAHESHA WAY**, Acting Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the New Jersey Democratic State Committee has selected the following named individual to serve as a member on the New Jersey Apportionment Commission, to fill a vacancy, pursuant to Article IV, Section III of the New Jersey State Constitution and the bylaws adopted by the New Jersey Apportionment Commission:

Laura Matos (Monmouth County)



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of the Secretary of State at Trenton, this 26th day of January 2022.


TAHESHA WAY
ACTING SECRETARY OF STATE

BROWN & CONNERY, LLP

William M. Tambussi, Esq. (ID No. 031431983)

Michael J. Miles, Esq. (ID No. 024862005)

Carmen Y. Day, Esq. (ID No. 318322020)

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Attorneys for Plaintiff

STEPHEN M. SWEENEY, in his individual capacity and his official capacity as a Member of the New Jersey Apportionment Commission,

Plaintiff,

v.

LEROY J. JONES, JR., in his official capacity as Chair of the New Jersey Democratic State Committee, Co-Chair and Member of the New Jersey Apportionment Commission, and in his individual capacity, LAURA MATOS, in her individual capacity, NEW JERSEY APPORTIONMENT COMMISSION, and TAHESHA WAY, in her official capacity as New Jersey Secretary of State,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY**

Docket No.

Civil Action

**NOTICE OF MOTION FOR
PRELIMINARY INJUNCTION WITH
TEMPORARY RESTRAINTS**

PLEASE TAKE NOTICE that Plaintiff, Steven M. Sweeney ("Plaintiff"), through his counsel Brown & Connery, LLP, will move before the Superior Court of New Jersey, Chancery Division, Mercer County, as soon as counsel may be heard, for a preliminary injunction and a temporary restraining order.

Pursuant to R. 1:6-3(a), Plaintiff shall rely on the Verified Complaint and Brief in Support of Plaintiff's Motion for Preliminary Injunction with Temporary Restraints.

In accordance with R. 1:6-2(a) and R. 4:42-1(e), an original and one copy of a proposed form of order, as well as a proposed order to show cause, along with a self-addressed, stamped envelope, are submitted herewith.

Pursuant to R. 1:6-2(d), oral argument is requested if opposition is filed.

Respectfully submitted,

BROWN & CONNERY, LLP

Date: January 27, 2022

s/ William M. Tambussi
William M. Tambussi, Esquire
Michael J. Miles, Esquire
Carmen Y. Day, Esquire
360 Haddon Avenue
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(856) 854-8900

Attorneys for Plaintiff

STEPHEN M. SWEENEY, in his individual capacity and his official capacity as a Member of the New Jersey Apportionment Commission,

Plaintiff,

v.

LEROY J. JONES, JR., in his official capacity as Chair of the New Jersey Democratic State Committee, Co-Chair and Member of the New Jersey Apportionment Commission, and in his individual capacity, LAURA MATOS, in her individual capacity, NEW JERSEY APPORTIONMENT COMMISSION, and TAHESHA WAY, in her official capacity as New Jersey Secretary of State,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MERCER COUNTY**

Docket No.

Civil Action

**BRIEF IN SUPPORT OF PLAINTIFF'S
ORDER TO SHOW CAUSE SEEKING
TEMPORARY RESTRAINTS**

INTRODUCTION

This action challenges the unilateral and unlawful removal of Plaintiff, Stephen M. Sweeney ("Sweeney"), from his constitutionally appointed position as a Member of the New Jersey Apportionment Commission by Defendant, LeRoy J. Jones, Jr. ("Jones"). The politically punitive actions by Jones cannot override the New Jersey Constitution and the terms and conditions of the loyalty agreement that Sweeney was required to sign once he

was duly appointed to the New Jersey Apportionment Commission as the only Democratic member from the eight counties of southern New Jersey.

STATEMENT OF FACTS

The New Jersey Constitution provides that after every decennial census of the United States, “the Senate districts and Assembly districts shall be established, and the senators and members of the General Assembly shall be apportioned among them.” N.J. Const. Art. 4, § 3, ¶ 1. This work is to be done “by an Apportionment Commission consisting of ten members, five to be appointed by the chairman of the State committee of each of the two political parties whose candidates for Governor receive the largest number of votes at the most recent gubernatorial election.” Id. “Each State chairman, in making such appointments, shall give due consideration to the representation of the various geographical areas of the State.” Id. “Appointments to the Commission shall be made on or before November 15 of the year in which such census is taken and shall be certified by the Secretary of State on or before December 1 of that year.” Id.

The New Jersey Constitution does not provide for the removal of a member of the Commission once appointed. Further, the New Jersey Constitution does not permit the appointment or certification of a member of the Commission beyond the constitutional deadlines.

On or before November 15, 2020, Sweeney was appointed to be a Democratic Member of the Commission, pursuant to the terms of Article 4, Section 3 of the New Jersey Constitution. (See Verified Complaint at ¶ 15.) On or before December 1, 2020, Sweeney’s appointment was certified by the Secretary of State, pursuant to the terms of Article 4, Section 3 of the New Jersey Constitution. (Id. at ¶ 16.) On or before November 15, 2020,

the following individuals were also appointed to be Democratic Members of the Commission: Jones (who resides in Essex County), Cosmo Cirillo (who resides in West New York, Hudson County), Gary Taffet (who resides in East Brunswick, Middlesex County), and Diane T. Tedta (who resides in Fairview, Bergen County). (Id. at ¶ 17.) All were timely certified by the Secretary of State. (Id. at ¶ 18.) Sweeney was the only Democratic Member who resides in one of the eight counties comprising southern New Jersey. (Id. at ¶ 19.)

Members of the Commission appointed by the Democratic State Chairman, in consideration of their appointment to Commission, are required to sign an agreement (the “Agreement”) setting forth certain terms and conditions. (Id. at ¶ 20.) Sweeney entered into the Agreement with the Democratic State Chairman, effective November 15, 2020. (See Verified Complaint, Exhibit A.) The Agreement provides, in relevant part, “I understand and agree that I have been appointed by the Democratic State Chairman based on the representation that I will fully adhere to the terms and conditions of the provisions of this Agreement and that any violation of this Agreement will result in my immediate removal from the Commission without further recourse, hearing, or appeal by the execution of this Agreement.” (Id.)

The terms and conditions of the Agreement required Sweeney and the other Democratic members of the Commission to agree that each member:

1. Understands that the Commission is established and operated under the New Jersey Constitution,
2. Agrees that he or she will serve without compensation,

3. Agrees that he or she will not accept any gift, offer of employment or anything of value with the intent to influence the member,
4. Understands that the full Commission will adopt governing rules;
5. Agrees that the State Democratic Chair will designate the Chair of the delegation,
6. Agrees that the delegation will adopt its own rules that will govern sharing of internal discussions and strategy, confidential information, staffing and public comments regarding Commission affairs and deliberations, and
7. Agrees that the delegation will cast its entire vote as a unit.

(See Verified Complaint, Exhibit A.) There can be no doubt that the Agreement compelled loyalty and restricted the words and actions of the Democratic members of the Commission.¹

The Agreement does not permit removal from the Commission in the absence of a violation of its terms. (See Verified Complaint at ¶ 23.) Sweeney has complied with all terms of the Agreement at all times. (Id. at ¶ 24.) The Commission adopted the New Jersey Apportionment Commission By-Laws and Rules (the “By-Laws”) on October 15, 2021 and amended those By-Laws on November 6, 2021. (See Verified Complaint, Exhibit B.) The Commission By-Laws do not provide for the removal of a member of the Commission once appointed. (Id.)

With Sweeney as a member, the Commission has conducted weekly calls, undertaken numerous public hearings, and completed a substantial portion of their work to

¹ It is believed that the Republican members of the Commission are not so limited and restricted by such an Agreement.

formulate legislative district maps. (Id. at ¶ 27.) With the Commission's work drawing to the finish, proposed maps were scheduled to be presented to the eleventh member of the Commission for evaluation on or before February 3, 2022. (Id. at ¶ 28.)

On January 26, 2022, Jones filed a letter with the Secretary of State purporting to remove Sweeney as a member of the Commission. (See Verified Complaint, Exhibit C.) Jones requested that the Secretary of State certify Matos (who resides in Monmouth County) to replace Sweeney. (Id.) On January 26, 2022, the Secretary of State certified Matos to be a Member of the Commission. (See Verified Complaint, Exhibit D.) As a result, the Commission does not have a single Democratic Member who resides in one of the eight counties comprising southern New Jersey. (Id. at ¶ 32.)

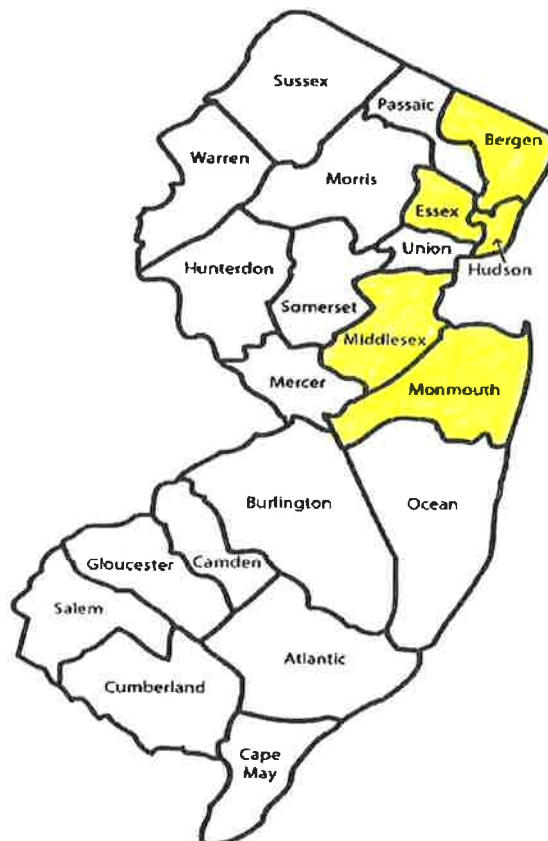
The constitutional deadline for the Commission to certify the results of its work is March 1, 2022, see N.J. Const. Art. 4, § 3, ¶ 4, making the necessity of relief in this matter both time sensitive and urgent. (Id. at ¶ 33.)

LEGAL ARGUMENT

It is well-settled that to obtain temporary relief, a plaintiff must: (1) show that such relief is necessary to prevent irreparable harm; (2) show that the legal right underlying the claim is settled; (3) make a preliminary showing of probability of ultimate success on the merits; and (4) show that he will suffer greater hardship if injunctive relief is denied than the opposing party will if it is granted. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); Ispahani v. Allied Domecq Retailing USA, 320 N.J. Super. 494, 498 (App. Div. 1999). Each of these factors must be clearly and convincingly demonstrated. Waste Mgmt. of N.J., Inc. v. Morris County Mun. Utilities Auth., 433 N.J. Super. 445, 452 (App. Div. 2013). All four Crowe factors favor the imposition of temporary restraints in this matter.

First, temporary restraints are necessary to prevent irreparable harm. Sweeney was duly appointed as a Democratic Member of the Commission on or before November 15, 2020. At all applicable times, Sweeney has abided by the terms of the Agreement and performed his constitutional duties in good faith. Moreover, as the only member of the Commission from one of the eight counties comprising southern New Jersey, Sweeney represented the interests of a significant geographical region of the State. In the absence of relief, Sweeney will be denied his valid constitutional appointment to the Commission and contractual right to remain on the Commission, and the voters of southern New Jersey will be denied a voice in how their legislative districts are drawn.

The scope of the harm that would follow the denial of temporary relief is plain when the representation given to “the various geographical areas of the State” with the replacement of Sweeney by Matos is considered:



Money damages cannot remedy such a harm.

The legal rights underlying this claim are well settled. The New Jersey Constitution plainly and unambiguously provides:

Each State chairman, in making such appointments, **shall** give due consideration to the representation of the various geographical areas of the State. Appointments to the Commission **shall** be made on or before November 15 of the year in which such census is taken and **shall** be certified by the Secretary of State on or before December 1 of that year.

N.J. Const. Art. 4, § 3, ¶ 1 (emphasis added). While this provision has not been considered by our Courts, its meaning is nonetheless clear. Appointments **must** be made on or before November 15. Appointments **must** be certified on or before December 1. And the representation of the various geographical areas of the State **must** be considered. No mechanism for removal of a member is provided.

Further, the enforceability of contracts is well settled under New Jersey law. See Matter of Cty. of Atl., 230 N.J. 237, 254 (2017) (“It is well-settled that courts enforce contracts based on the intent of the parties, the express terms of the contract, surrounding circumstances and the underlying purpose of the contract.”) (internal quotations and citations omitted). A contract must be enforced as written where the contract entered into by the parties is clear. Id. at 254.

Third, Plaintiff is likely to prevail on the merits. Sweeney was duly appointed to the Commission on or before November 15, 2020 and certified on or before December 1, 2020 in accordance with the constitutional deadlines set forth in Article IV, Section III of the New Jersey Constitution. The constitutional deadline has expired, rendering any effort

to unilaterally remove or replace a member of the Commission unlawful. As such, Matos's replacement of Sweeney on January 26, 2022, after the Commission has already begun its work and less than five weeks before the deadline for the Commission to complete its work, was unlawful and improper. Moreover, the New Jersey Constitution requires due consideration be given to the representation of the various geographical areas of the State. If Matos is permitted to remain on the Commission, southern New Jersey would have no representation on the Commission. Given the clear constitutional illegality of Defendants' conduct, Plaintiff is likely to prevail on the merits of this claim.

Furthermore, Sweeney undisputedly entered into a contract with the Commission by way of the November 2020 Agreement appointing him as Democratic Member of the Commission. The clear intent of the parties was to appoint Sweeney to the Commission and to limit what Sweeney and all other members of the Commission could say or do. The express terms of paragraph eight of the Agreement provide that Sweeney was "appointed by the Democratic State Chairman based on the representation that [he would] fully adhere to the terms and conditions of the provisions of [the] Agreement" and that any violation thereof would result in his "immediate removal from the Commission[.]" Sweeney fulfilled all duties and obligations as a member of the Commission, pursuant to the Agreement, from the time of his appointment to the time of his unlawful removal without cause or authority by Jones. Jones did not, because he cannot, offer any evidence that Sweeney failed to comply with the terms and conditions of the provisions of the Agreement.

Finally, the balance of the equities favors temporary restraints because Plaintiff and the voters of southern New Jersey he represents would suffer greater harm in the absence of such relief than Defendants would suffer from the imposition of the relief requested. The

adverse consequences borne by the voters of southern New Jersey will be felt for at least the next decade. By contrast, the Commission will suffer no harm by the reinstatement of Sweeney to the position to which he is constitutionally and contractually entitled.

All four Crowe factors thus favor the imposition of temporary restrains and a preliminary injunction.

CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests the Court grant his Motion for a Preliminary injunction.

Respectfully submitted,

BROWN & CONNERY, LLP
Attorneys for Plaintiff

Dated: January 27, 2022

s/ William M. Tambussi
William M. Tambussi
Michael J. Miles
Carmen Y. Day

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STEPHEN M. SWEENEY, in his individual capacity and his official capacity as a Member of the New Jersey Apportionment Commission,

Plaintiff,

v.

LEROY J. JONES, JR., in his official capacity as Chair of the New Jersey Democratic State Committee, Co-Chair and Member of the New Jersey Apportionment Commission, and in his individual capacity, LAURA MATOS, in her individual capacity, NEW JERSEY APPORTIONMENT COMMISSION, and TAHESHA WAY, in her official capacity as New Jersey Secretary of State,

Defendants.

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CERTIFICATE OF SERVICE

I, Carmen Y. Day, Esquire, of full age, hereby certify as follows:

1. I am an Associate at the law firm of Brown & Connery, LLP and am one of the attorneys assigned to handle this matter. I have personal knowledge of the facts contained herein.

2. I caused true and correct copies of Plaintiff's Verified Complaint, Verification, Notice of Motion for a Preliminary Injunction with Temporary Restraints, Brief in Support of a Preliminary Injunction with Temporary Restraints, Temporary

Restraining Order and Order to Show Cause, Proposed form of Order, and this Certificate of Service to be served this day upon the following in the manner indicated:

Leroy J. Jones, Jr.
New Jersey Democratic State Committee
196 West State Street
Trenton, New Jersey 08608
Via Hand Delivery

Laura Matos
515 7th Avenue
Belmar, New Jersey 07719
Via Hand Delivery

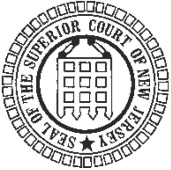

New Jersey Apportionment Commission
c/o Office of Legislative Services
State House Annex
Trenton, New Jersey 08625-0068
Via Hand Delivery

Tahesha Way
Secretary of State
20 West State Street
4th Floor
Trenton, New Jersey 08625
Via Hand Delivery

I certify that the foregoing statements are true. If any of the above statements are willfully false, I am subject to punishment.

Dated: January 27, 2022

s/ Carmen Y. Day
Carmen Y. Day

	<h2 style="margin: 0;">Civil Case Information Statement</h2> <h3 style="margin: 0;">(CIS)</h3> <p style="margin: 5px 0 0 0;">Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed</p>		For Use by Clerk's Office Only	
			Payment type: <input type="checkbox"/> ck <input type="checkbox"/> cg <input type="checkbox"/> ca	
			Chg/Ck Number:	
			Amount:	
			Overpayment:	
				Batch Number:
Attorney/Pro Se Name William M. Tambussi		Telephone Number (856) 854-8900		County of Venue Mercer
Firm Name (if applicable) Brown & Connery, LLP			Docket Number (when available) C-7-22	
Office Address 360 Haddon Avenue Westmont, NJ 08108			Document Type Verified Complaint	
			Jury Demand <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Name of Party (e.g., John Doe, Plaintiff) Stephen M. Sweeney		Caption: Stephen M. Sweeney v. Leroy J. Jones, Jr., Laura Matos, New Jersey Apportionment Commission, and Tahesha Way		
Case Type Number (See reverse side for listing) 999	Are sexual abuse claims alleged? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is this a professional malpractice case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If you have checked "Yes," see <i>N.J.S.A. 2A:53A-27</i> and applicable case law regarding your obligation to file an affidavit of merit.		
Related Cases Pending? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If "Yes," list docket numbers		
Do you anticipate adding any parties (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Name of defendant's primary insurance company (if known) <div style="text-align: right;"> <input checked="" type="checkbox"/> None <input type="checkbox"/> Unknown </div>		
The Information Provided on This Form Cannot be Introduced into Evidence.				
Case Characteristics for Purposes of Determining if Case is Appropriate for Mediation				
Do parties have a current, past or recurrent relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If "Yes," is that relationship: <input type="checkbox"/> Employer/Employee <input type="checkbox"/> Friend/Neighbor <input checked="" type="checkbox"/> Other (explain) <input type="checkbox"/> Familial <input type="checkbox"/> Business Members of Commission		
Does the statute governing this case provide for payment of fees by the losing party? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition This is an emergent matter with a constitutional deadline of March 1, 2022 for the New Jersey Apportionment Commission to complete its work. Urgent relief is necessary on an expedited basis to resolve this matter.				
 Do you or your client need any disability accommodations? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, please identify the requested accommodation:		
Will an interpreter be needed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, for what language?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).				
Attorney Signature: William M. Tambussi				



Civil Case Information Statement (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days discovery

- | | |
|--|---|
| 151 Name Change | 506 PIP Coverage |
| 175 Forfeiture | 510 UM or UIM Claim (coverage issues only) |
| 302 Tenancy | 511 Action on Negotiable Instrument |
| 399 Real Property (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction) | 512 Lemon Law |
| 502 Book Account (debt collection matters only) | 801 Summary Action |
| 505 Other Insurance Claim (including declaratory judgment actions) | 802 Open Public Records Act (summary action) |
| | 999 Other (briefly describe nature of action) |
| | Violation of NJ Constitution |

Track II - 300 days discovery

- | | |
|---|---|
| 305 Construction | 603Y Auto Negligence – Personal Injury (verbal threshold) |
| 509 Employment (other than Conscientious Employees Protection Act (CEPA) or Law Against Discrimination (LAD)) | 605 Personal Injury |
| 599 Contract/Commercial Transaction | 610 Auto Negligence – Property Damage |
| 603N Auto Negligence – Personal Injury (non-verbal threshold) | 621 UM or UIM Claim (includes bodily injury) |
| | 699 Tort – Other |

Track III - 450 days discovery

- | | |
|------------------------------|--|
| 005 Civil Rights | 608 Toxic Tort |
| 301 Condemnation | 609 Defamation |
| 602 Assault and Battery | 616 Whistleblower / Conscientious Employee Protection Act (CEPA) Cases |
| 604 Medical Malpractice | 617 Inverse Condemnation |
| 606 Product Liability | 618 Law Against Discrimination (LAD) Cases |
| 607 Professional Malpractice | |

Track IV - Active Case Management by Individual Judge / 450 days discovery

- | | |
|---|--|
| 156 Environmental/Environmental Coverage Litigation | 514 Insurance Fraud |
| 303 Mt. Laurel | 620 False Claims Act |
| 508 Complex Commercial | 701 Actions in Lieu of Prerogative Writs |
| 513 Complex Construction | |

Multicounty Litigation (Track IV)

- | | |
|---|---|
| 271 Accutane/Isotretinoin | 601 Asbestos |
| 274 Risperdal/Seroquel/Zyprexa | 623 Propecia |
| 281 Bristol-Myers Squibb Environmental | 624 Stryker LFIT CoCr V40 Femoral Heads |
| 282 Fosamax | 625 Firefighter Hearing Loss Litigation |
| 285 Stryker Trident Hip Implants | 626 Abilify |
| 286 Levaquin | 627 Physiomesh Flexible Composite Mesh |
| 289 Reglan | 628 Taxotere/Docetaxel |
| 291 Pelvic Mesh/Gynecare | 629 Zostavax |
| 292 Pelvic Mesh/Bard | 630 Proceed Mesh/Patch |
| 293 DePuy ASR Hip Implant Litigation | 631 Proton-Pump Inhibitors |
| 295 AlloDerm Regenerative Tissue Matrix | 632 HealthPlus Surgery Center |
| 296 Stryker Rejuvenate/ABG II Modular Hip Stem Components | 633 Prolene Hernia System Mesh |
| 297 Mirena Contraceptive Device | 634 Allergan Biocell Textured Breast Implants |
| 299 Olmesartan Medoxomil Medications/Benicar | |
| 300 Talc-Based Body Powders | |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category ☐ Putative Class Action ☐ Title 59 ☐ Consumer Fraud