

BAILIWICK NEWS

March 11, 2019 – Volume 3, Issue 10

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Parks Miller v. Shutt: Update on civil litigation regarding alleged breach of fiduciary duty

By Katherine Watt

In August 2015, then-District Attorney Stacy Parks Miller filed a civil suit against 11 Centre County citizens who had participated in reporting and/or investigating Parks Miller's role in the filing of a fake and possibly forged bail order in September 2013.

The basis of Parks Miller's claims was her interpretation of a July 2015 grand jury report regarding a secret Office of Attorney General (OAG) investigation into the allegations. Parks Miller interpreted the grand jury report as retroactive exoneration, tantamount to a verdict of "innocent" issued after a public, adversarial jury trial.

The civil suit defendants included county commissioners, a county solicitor, a county administrator, a county judge, several local defense attorneys, and Parks Miller's former paralegal, Michelle Shutt.

In her complaint, Parks Miller claimed that the defendants had breached fiduciary duties owed to Parks Miller; defamed her; placed her in a false light; published injurious falsehoods about her; engaged in malicious prosecution and common law abuse of process; committed negligent acts and acts of legal malpractice; intentionally or negligently inflicted emotional distress on her; engaged in concerted tortious conduct and conspiracy against her; and violated her Fourteenth Amendment due process rights, her Fourth and Fourteenth Amendment privacy rights, and her First Amendment free speech rights.

By October 2015 the case had been moved to US District Court based on the federal civil rights claims. Ensuing proceedings were covered in detail in the April 21, 2017 edition of *Bailiwick News*.

In short, the defendants didn't share Parks Miller's interpretation of the legal significance of the grand jury's report or her confidence in the legitimacy of the secret grand jury process itself; her expansive interpretation of her privacy rights as a public figure; or her narrow interpretation of the defendants' free speech rights as private citizens and public officials.

USDC Judge Matthew Brann dismissed all 129 of Parks Miller's civil claims by Sept. 2016.

Parks Miller appealed Brann's decisions to the Third Circuit Court of Appeals, forcing the defendants to file another round of briefs.

In August 2017, the Third Circuit upheld 128 of the 129 dismissals, remanding a single claim: that Shutt, Parks Miller's former paralegal, arguably may

have owed Parks Miller a fiduciary duty and may have breached it by preserving evidence, and participating in the reporting and investigation of the forgery and records tampering allegations.

Since both Parks Miller and Shutt are Centre County residents and breach of fiduciary duty is a state tort, their dispute was no longer a federal matter, and was kicked back down to Centre County.

David C. Klementik, a semi-retired judge from Somerset County, was appointed to handle the case.

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Parks Miller filed a Second Amended Complaint in January 2018, again claiming that Shutt's statements – about witnessing Parks Miller forge a judge's signature on a fake bail order – made to law enforcement and Disciplinary Board investigators operating under the authority of the Pa. Supreme Court to supervise attorneys practicing in Pennsylvania, were "false."

Parks Miller claimed Shutt "stole" "confidential" emails corroborating Shutt's account of the incident, by forwarding the emails to Shutt's personal account from her work account.

Parks Miller claimed Shutt was therefore personally and solely responsible for harms endured by Parks Miller related to criminal, civil and administrative investigations, including legal fees, psychological damage, reputational damage/public disgrace, and re-election defeat.

In her Answer, Shutt pointed out that controversial information about Parks Miller's apparent *ex parte* texting and phone calls with Centre County judges pre-dated Shutt's affidavit about witnessing Parks Miller's forgery. Shutt said that she only came forward with the forgery evidence in late December 2014, after she learned that the Disciplinary Board was already investigating Parks Miller for ethical violations; Shutt prepared her affidavit to assist the Disciplinary Board investigation.

Shutt further provided news reports stating that then-Attorney General Kathleen Kane intervened in the secret grand jury investigation to ensure an outcome favorable to Parks Miller, and again pointed out that grand juries are not empowered to "exonerate" targets.

Shutt argued that any fiduciary duty she may have owed to Parks Miller was superseded by her duty to the public, to preserve evidence and report alleged crimes to disciplinary and law enforcement officials, and to participate in ensuing investigations.

Shutt observed, about Parks Miller's claim that

the ‘murder-for-hire’ investigation underlying the fake bail order was a secret investigation, “nothing in an investigation – no matter how secret – trumps the requirement of a district attorney to conduct an investigation legally and without forging court orders.”

Rebutting Parks Miller’s claim that Shutt alone was responsible for her woes, Shutt wrote:

“To the contrary...the voters of Centre County determined that Parks Miller’s own professional and personal choices destroyed her career...the voters of Centre County grew weary of what they perceived to be Parks Miller’s unethical and unprofessional behavior as they resoundingly found a better, more preferable candidate...”

In her Answer, Shutt quoted from an article by Attorney Justin McShane, posted Sept. 1, 2015, after the grand jury report came out in July 2015 and after Parks Miller announced her August 2015 retaliatory defamation suit against those who had participated in the investigations:

“...If the findings of the Grand Jury are to be taken as true, then an alarming narrative develops. According to the report, Stacy Parks Miller concocted a scheme enlisting a sitting judge of the Court of Common Pleas (Pamela A. Ruest) to sign an order of court to aid in advancing the investigation of a murder-for-hire plot, and knowingly creating a ‘fake order.’

In the very best light for [Parks Miller], if true, it is an impermissible corruption of the judiciary by the executive branch. Such an act invades and actually supplants the doctrine of the separation of powers...”

[Note: Ruest has so far evaded public accountability for her role in the “ruse” delineated by the grand jury – through the Reaganesque expedient of claiming not to recall the bail order in question, and not to recognize whether the signature upon it is, or is not, her own. Instead, she was promoted to President Judge of the Centre County Court of Common Pleas in September 2017.]

Shutt also attached a collection of letters-to-the-editor of the *Centre Daily Times*, in which voters explained their reasons for supporting challenger Bernie Cantorna in the 2017 DA’s race. Letter authors specifically cited Parks Miller’s demonstrated “contempt” for voters as expressed in public forums in person and online.

Among her affirmative defenses, Shutt listed Parks Miller’s lack of standing (since she was no longer District Attorney by January 2018); Parks Miller’s “unclean hands,” having engaged in “nefarious conduct

that would make an award in her favor unjust;” Parks Miller’s “contributory negligence” – the actions she took herself that damaged her reputation and legal career; and her “selective enforcement” of DA’s office policies regarding confidentiality and forwarding of work emails to personal email addresses.

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In May 2018, Shutt filed a Motion for Summary Judgment, arguing that the case should be dismissed, since Parks Miller had lost her reelection bid the previous year, was no longer District Attorney, and therefore no longer had standing to sue.

Parks Miller retorted that the fiduciary duty owed was “common law” and “personal,” unrelated to Parks Miller’s position as District Attorney, leaving her standing to sue intact.

Judge Klementik suspended discovery pending resolution of the summary judgment motion, denied the motion after a hearing on June 5, 2018, and simultaneously lifted the order suspending discovery.

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In September 2018, the attorney who had been handling Shutt’s case (Kathleen Yurchak) withdrew, and attorney Joshua Autry entered an appearance.

In late September, Autry began filing detailed discovery requests seeking evidence and testimony about Parks Miller’s key claim: that Shutt’s statements about witnessing Parks Miller forge a judge’s signature on a fake bail order were “false.”

Autry first sought information from Parks Miller herself, through standard civil discovery tools: requests for production of documents and responses to formal interrogatories.

He requested emails, letters, investigative notes and other records related to the original ‘murder for hire’ investigation conducted by Parks Miller and whether other DA office personnel, including Parks Miller, regularly forwarded work emails to their personal email accounts.

He requested a list of the specific statements Shutt allegedly made to third parties in breach of fiduciary duty: when, where, to whom and what Shutt said.

He requested records of the Bellefonte Police Department, Disciplinary Board and OAG investigations into Parks Miller’s conduct, including any handwriting analyses by Lesnevich and Detwiler Forensic Document Examiners.

He requested records of Right to Know proceedings related to evidence of *ex parte* communications.

Autry also requested law firm billing records related to calculating and attributing financial damages for the multiple legal proceedings in which

Parks Miller has been embroiled.

And he requested records of any other investigations into Parks Miller's conduct that may have been performed by the Centre County Clerk's Office or the Centre County DA's Office.

In late October filings, Parks Miller refused to respond to the questions or provide most supporting documents, on multiple general grounds.

Parks Miller followed up a few days later providing 26 pages of material.

In her responses, Parks Miller claimed that information relating to the truth or falsity of Shutt's statements was irrelevant to the issue of Shutt's alleged fiduciary duty breach.

She claimed that sealing orders by grand jury Supervising Judge Norman Krumenacker barred disclosure of grand jury investigation materials.

She claimed that the Pennsylvania Criminal History Record Information Act – or "CHRIA," mandated by the federal government to control the collection, secure maintenance and lawful dissemination of individuals' criminal records by law enforcement agencies – barred any disclosures about criminal investigations into Parks Miller's conduct.

Parks Miller also claimed that the requests were "cumulative" and "unduly burdensome or harassing."

In general, when a party wants to withhold information from a counterparty during civil discovery, he or she is required to specifically identify each piece of evidence and cite a specific court order, rule, privilege or other reason why full disclosure of the contents is barred, so that the parties can argue about the applicability of the rules or privileges to each piece of withheld evidence.

Parks Miller didn't identify specific records or the rules barring disclosure.

By subpoenas prepared in late October, Autry notified Parks Miller that he would be seeking similar records from third parties, including the Bellefonte Police Department where the criminal complaint was initially reported and investigated, PATCtech (the forensic technology firm that handled initial downloads of data from Parks Miller's work computer and phone); and First Deputy Attorney General Michelle Henry and OAG Attorney Simquita Bridges, for records of the OAG investigations into the forgery and tampering with public record allegations.

Autry also prepared subpoenas to the Disciplinary Board, Centre County District Attorney's Office, Centre County Clerk's Office, Lesnevich and Detwiler Forensic Document Examiners (handwriting analysts) and various law firms that had represented Parks Miller.

On Nov. 1, through her attorney Bruce Castor, Parks Miller filed motions to quash all the subpoenas to third parties.

Autry responded by letter dated Nov. 2, 2018, acknowledging that it could be necessary to seek an

unsealing order from Judge Krumenacker for grand jury material.

However, Autry further noted:

"...[Parks Miller] wishes to claim innocence while completely preventing any discovery into any evidence of [her] potential guilt...We need the ability to have records that relate to whether 1) Plaintiff is, in fact, innocent of the forgery, and 2) other allegations of misconduct against Plaintiff that could have contributed to Plaintiff's reelection loss."

Autry notified Castor that – given Parks Miller's refusal to turn over documents and other information – Shutt's deposition scheduled for Nov. 27 would need to be postponed until the resolution of the discovery issues, because Autry couldn't properly prepare Shutt for questioning without having access to the evidence she might be questioned about.

Autry concluded his Nov. 2 letter to Castor by commenting that "what's good for the goose is good for the gander" as far as grand jury secrecy barring Shutt from disclosing grand jury information about investigations, witnesses and documents, as much as it may bar Parks Miller from doing so.

Autry asked Castor to

"...please confirm that [Parks Miller] does not have and will not use any materials subject to the [grand jury] sealing order(s) in her preparation or defense in this suit. Moreover, please confirm that Plaintiff has not done so previously in this litigation."

Castor's written responses were non-productive, and Castor refused to discuss the discovery issues with Autry by telephone.

Thus, on Nov. 20, 2018, Shutt filed a Motion to Compel, asking Judge Klementik to overrule Parks Miller's non-grand jury objections to disclosure, and asking Klementik to let Shutt seek an unsealing order from Judge Krumenacker for grand jury-related material.

Shutt cited numerous cases finding that CHRIA protections don't bar the disclosure of material to a defendant in a criminal prosecution, because defendants have a right to examine relevant evidence to prepare defenses to incriminating material and identify potentially exculpatory records.

Shutt also cited cases in which courts found CHRIA likely permits disclosure of material to defendants in *civil* matters, for similar due process reasons, so long as the material is not disclosed to the general public.

Shutt concluded:

“...to hold otherwise would create an absurd result, preventing law enforcement from using their investigation files, confessions, video and witness statements to defend themselves in malicious prosecution and defamation cases, for example. Indeed, [Parks Miller] in this case seeks to claim that [Shutt] falsely reported a crime, but prevent [Shutt] from discovery into a) what [Shutt] actually stated to law enforcement, and b) whether the evidence proves the falsity as [Parks Miller] claims.”

Judge Klementik held a hearing on the discovery disputes on Dec. 4, 2018, and then issued an order stating he would take “the discovery situation under advisement and issue a general rule as to how to proceed.”

By email dated March 10, 2019, Autry confirmed to *Bailiwick News* that there’s been no further word from Judge Klementik since his December order.

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KW INVESTIGATIONS LLC
156 W. Hamilton Ave.
State College PA 16801
(814) 237-0996
kw.investigations.llc@gmail.com
bailiwicknews.com

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