

**FRIEDMAN DOHERTY, LLC**

Sander D. Friedman, Esquire  
125 North Route 73  
West Berlin, New Jersey 08091  
(856) 988-7777

Attorneys for the Plaintiff James Gensch and the Putative Class

24370

RECEIVED  
SHERIFF'S OFFICE

**FILED**

APR 13 2011

JUDGE YOLANDA CICCONE

James Gensch, on behalf of himself  
and all others similarly situated,

*Plaintiff,*

vs.

Mary H. Melfi, in her capacity  
as the Hunterdon County Clerk,  
and Hunterdon County through the  
Hunterdon County Board of  
Chosen Freeholders,

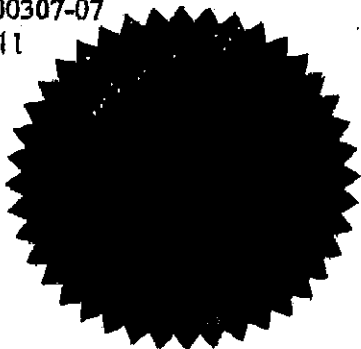
*Defendants.*

NEW JERSEY SUPERIOR COURT  
HUNTERDON COUNTY LAW DIVISION

DOCKET NO: HNT-L-000307-07  
J-107162-11

Civil Action

WRIT OF EXECUTION



**THE STATE OF NEW JERSEY  
TO SHERIFF OF HUNTERDON COUNTY GREETINGS**

*WHEREAS*, Judgement was rendered on February 7, 2011, in an action in the Superior Court of New Jersey, Hunterdon County, Law Division, between the Plaintiff James Gensch, on behalf of himself and all others similarly situated and the Defendants, Mary H. Melfi, in her capacity as the Hunterdon County Clerk, and Hunterdon County through the Hunterdon County Board of Chosen Freeholders, and in favor of Plaintiffs, and against Defendants for the sum of \$93,265.37.

*THEREFORE*, we command you, that you satisfy the Judgement out of the personalty or real property of the Defendant, in your County belonging to the Judgment Defendant at the time when judgment was docketed in the office of the Clerk of the Superior Court, or any time thereafter, in whosever hands the same may be; and that you do pay the monies realized by you from such personal or real property to Friedman Doherty, LLC, 125 N. Rt. 73, West Berlin, New Jersey, its attorney in the said action and return this Execution and your proceedings thereon within 24 months after the date of its issuance to the Clerk of the New Jersey Superior Court.

*WE FURTHER COMMAND YOU*, that in the case of a sale, you make return of this Writ with your proceedings thereon before said Court and pay to the Clerk of this Court any surplus in your hands within 30 days after said sale.

*WITNESS*, the Honorable  
April, 2011.

YOLANDA CICCONE, A.J.S.C., our Judge of the Superior Court, this 13<sup>th</sup> day of

YOLANDA CICCONE, A.J.S.C.

By: Sander D. Friedman, Esquire  
Attorney for Plaintiffs

Jennifer M. Perez  
Jennifer M. Perez, Clerk of Superior Court

### Hunterdon County Sheriff's Office PROOF OF PROCESS SERVICE

Plaintiff JAMES GENSCH, on behalf of himself and all others similarly situated,  
Defendant MARY H. MELFI, in her capacity as the Hunterdon County Clerk, and HUNTERDON COUNTY through the HUNTERDON COUNTY

Service # 1 of 1 Services  
Docket # HNT-L-000307-07  
Sheriff's # **W 24370**  
**BANK**  
**SUPERIOR**  
**NEW JERSEY**  
**HUNTERDON**

Person/Corp Served  
WELLS FARGO

Papers to Serve  
WRIT OF EXECUTION

74 CHURCH STREET  
Flemington, NJ

Alternate Address

I, FREDERICK W. BROWN, SHERIFF OF HUNTERDON COUNTY DO HEREBY DEPUTIZE AND APPOINT CPL. SANDRA FORD A DULY SWORN OFFICER TO EXECUTE AND RETURN THE DOCUMENTS ACCORDING TO LAW.

WITNESS BY HAND AND SEAL



Sheriff

Date of Service 4/15/2011  
Time of Service 2:05 PM  
Attempts

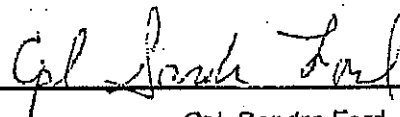
Served WELLS FARGO  
74 CHURCH STREET  
Flemington, NJ

Delivered To MARK ERLER  
Relationship VICE PRESIDENT

Type of Service SERVED REGISTERED AGENT AT PLACE OF BUSINESS

LEVIED ON FUNDS LOCATED AT WELLS FARGO BANK.

I, CPL. SANDRA FORD WAS ABLE TO SERVE THE WITHIN DOCUMENTS AND/OR A TRUE COPY THEREOF.



Cpl. Sandra Ford

FRIEDMAN DOHERTY, LLC  
125 NORTH ROUTE 73  
WEST BERLIN, NEW JERSEY 08091

Sheriff Fees \$53.20

**HUNTERDON COUNTY SHERIFF'S OFFICE**

PO Box 2900  
 Flemington, NJ 08822-2900  
 (908) 788-1166

JAMES GENSCHE, on behalf of himself and all others similarly situated,

vs. MARY H. MELFI, in her capacity as the Hunterdon County Clerk, and HU

Docket # HNT-L-000307-

Sheriff's #

**W 24370**

NOTICE TO DEBTOR: R. 4:69-1 (a) AND 6:7-1 (b)

**YOUR ASSETS, FUNDS LOCATED AT WELLS FARGO, HAS BEEN LEVIED UPON AT THE INSTRUCTION OF FRIEDMAN DOHERTY, LLC TO SATISFY IN WHOLE OR IN PART THE JUDGMENT AGAINST YOU WITH REFERENCE TO THE ENCLOSED ENTITLED MATTER.**

SOME PROPERTY MAY BE EXEMPT FROM EXECUTION BY FEDERAL AND STATE LAW, INCLUDING BUT NOT LIMITED TO: CLOTHING AND A TOTAL OF \$ 1,000.00 OF PERSONAL PROPERTY AND CASH, EXCEPT FOR GOODS PURCHASED AS PART OF THE TRANSACTION WHICH LEAD TO THE JUDGMENT IN THIS CASE; WELFARE BENEFITS; SOCIAL SECURITY BENEFITS; S.S.I. BENEFITS; V.A. BENEFITS; UNEMPLOYMENT BENEFITS; AND WORKERS' COMPENSATION BENEFITS AND CHILD SUPPORT YOU RECEIVE ARE EXEMPT, EVEN IF THE FUNDS HAVE BEEN DEPOSITED IN A BANK ACCOUNT.

IF THE LEVY IS AGAINST A BANK ACCOUNT, THE BANK HAS ALREADY BEEN NOTIFIED TO PLACE A HOLD ON YOUR ACCOUNT. HOWEVER, THE FUNDS WILL NOT BE TAKEN FROM YOUR ACCOUNT UNTIL THE COURT SO ORDERS. YOU MAY CLAIM YOUR EXEMPTION BY NOTIFYING THE CLERK OF THE SUPERIOR COURT AND THE PERSON WHO ORDERED THIS LEVY, WHOSE NAME APPEARS AS THE ATTORNEY OF RECORD, OF YOUR REASONS WHY YOUR PROPERTY IS EXEMPT. THIS CLAIM MUST BE IN WRITING AND IF IT IS NOT MAILED WITHIN TEN DAYS OF SERVICE OF THIS NOTICE, YOUR PROPERTY IS SUBJECT TO FURTHER PROCEEDINGS FOR EXECUTION. THE ADDRESS OF THE COURT IS HUNTERDON COUNTY SUPERIOR COURT CLERK, 65 PARK AVE., FLEMINGTON, NJ 08822. THE ADDRESS OF THE PERSON WHO ORDERED THIS LEVY IS : 125 NORTH ROUTE 73 WEST BERLIN, NEW JERSEY 08091

I MAILED A COPY OF THIS NOTICE TO THE DEFENDANT(S), THE CLERK OF THE ABOVE NAMED COURT AND THE PERSON WHO REQUESTED THE LEVY ON April 15, 2011, THE SAME DAY THIS LEVY WAS MADE. I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

*Frederick W. Brown*

DATE: April 15, 2011

FREDERICK W. BROWN  
 SHERIFF OF HUNTERDON COUNTY

### Hunterdon County Sheriff's Office PROOF OF PROCESS SERVICE

Plaintiff JAMES GENSCHE, on behalf of himself and all others similarly situated,  
Defendant MARY H. MELFI, in her capacity as the Hunterdon County Clerk, and HUNTERDON COUNTY through the HUNTERDON COUNTY

Service # 2 of 1 Services  
Docket # HNT-L-000307-07  
Sheriff's # **W 24370**  
**BANK**  
**SUPERIOR**  
**NEW JERSEY**  
**HUNTERDON**

Person/Corp Served  
TD BANK

Papers to Serve  
WRIT OF EXECUTION

334 ROUTE 31  
Raritan Township, NJ

Alternate Address

I, FREDERICK W. BROWN, SHERIFF OF HUNTERDON COUNTY DO HEREBY DEPUTIZE AND APPOINT CPL. SANDRA FORD A DULY SWORN OFFICER TO EXECUTE AND RETURN THE DOCUMENTS ACCORDING TO LAW.

WITNESS BY HAND AND SEAL



Sheriff

Date of Service 4/15/2011

Time of Service

Attempts

Served TD BANK  
334 ROUTE 31  
Raritan Township, NJ

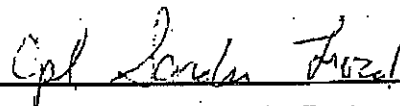
Delivered To

Relationship

Type of Service SERVED REGISTERED AGENT AT PLACE OF BUSINESS

LEVIED ON FUNDS LOCATED AT TD BANK.

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Cpl. Sandra Ford

FRIEDMAN DOHERTY, LLC  
125 NORTH ROUTE 73  
WEST BERLIN, NEW JERSEY 08091

Sheriff Fees \$53.20

## HUNTERDON COUNTY SHERIFF'S OFFICE

PO Box 2900  
 Flemington, NJ 08822-2900  
 (908) 788-1166

JAMES GENSCHE, on behalf of himself and all others similarly situated,

vs. MARY H. MELFI, in her capacity as the Hunterdon County Clerk, and HU

Docket # HNT-L-000307-

Sheriff's #

W 24370

NOTICE TO DEBTOR: R. 4:59-1 (g) AND 6:7-1(b)

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*Frederick W. Brown*

DATE: April 15, 2011

FREDERICK W. BROWN  
 SHERIFF OF HUNTERDON COUNTY

COPY

Filed At Chambers  
APR 30 2010  
Judge R. M. Casabianca

ORDER PREPARED BY THE COURT

JAMES GENSCH, on behalf :  
Of himself and all others :  
Similarly situated, :

Plaintiff, :

v. :

HUNTERDON COUNTY CLERK'S :  
OFFICE and MARY H. MELFI, :  
in her capacity as the :  
Hunterdon County Clerk, :  
and Hunterdon County :  
through the Hunterdon :  
County Board of Chosen :  
Freeholders, :

Defendant. :

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUNTERDON COUNTY  
DOCKET NO. HNT-L-307-07

CIVIL ACTION  
CONSENT ORDER

IT IS on this 30th day of April, 2010;

ORDERED:

1. That on or before June 30, 2010, the defendants shall provide to the plaintiff:

a) A statement as to the fee defendants intend to charge as the fee on the self-service photocopies and printers in the defendants' offices effective July 1, 2010;

b) Defendants shall provide a statement of how the fee was arrived at and the factors and components that went into the calculation of actual costs.

2. It is further ordered that if the charge exceeds \$.07 (7 cents) per copy the plaintiff is entitled to further discovery and reserves the right to file a summary judgment motion for a determination of the proper fee.

*4/30/10 to both  
attys.*

CERTIFIED TO BE  
A TRUE COPY

3. It is further ordered that plaintiffs pending summary judgment motion is withdrawn without prejudice.

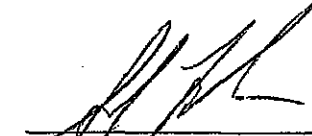


PETER A. BUCHSBAUM, J.S.C.

We hereby consent to the form and entry of this order.



GAETANO M. DESAPIO, ESQ.  
Attorney for defendants



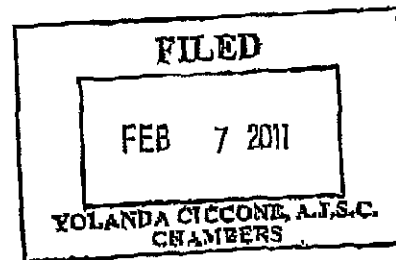
SANDER FRIEDMAN, ESQ.  
Attorney for plaintiff

CERTIFIED TO BE  
A TRUE COPY

**FRIEDMAN DOHERTY, LLC**

Sander D. Friedman, Esquire  
125 North Route 73  
West Berlin, New Jersey 08091  
(856) 988-7777

Attorneys for the Plaintiff James Gensch and the Putative Class



James Gensch, on behalf of himself  
and all others similarly situated,

*Plaintiff,*

vs.

Mary H. Melfi, in her capacity  
as the Hunterdon County Clerk,  
and Hunterdon County through the  
Hunterdon County Board of  
Chosen Freeholders,

*Defendants.*

NEW JERSEY SUPERIOR COURT  
HUNTERDON COUNTY LAW DIVISION

DOCKET NO. HNT-L-000307-07

Civil Action

**GRANTED**

ORDER

THIS MATTER having been opened to the Court by counsel representing Plaintiff on its Petition for Lead Plaintiff Stipend and Attorneys Fees and the Court having reviewed the moving papers, opposition and for other good cause shown:

IT IS on this \_\_\_\_\_ day of \_\_\_\_\_ 2010, ORDERED that:

1. Plaintiff's motion is hereby GRANTED.
2. Plaintiff is entitled to an award of attorney's fees in the amount of \$ 93,265.37
3. Plaintiff, James Gensch, is entitled to an incentive award in the amount of \$ 0.

YOLANDA CICCONE, A.J.S.C.

opposed  
 unopposed

# SUPERIOR COURT OF NEW JERSEY

SOMERSET, HUNTERDON AND WARREN COUNTIES  
VICINAGE 13

36278

YOLANDA CICCONE  
ASSIGNMENT JUDGE



SOMERSET COUNTY COURT HOUSE  
P.O. BOX 3000  
SOMERVILLE, NEW JERSEY 08876  
(908) 231-7069

March 14, 2011

**Sander D. Friedman, Esq.**  
125 North Route 73  
West Berlin, New Jersey 08091  
Counsel for Plaintiff

**Gaetano M. DeSapio**  
Olde Theater Center  
1110 Harrison Street  
Suite H  
Frenchtown, New Jersey 08825  
Counsel for Defendant

**RE: Gensch v. Hunterdon County Clerk's Office**  
**Docket No. HNT-L-307-07**

Dear Counsel,

On March 1, 2010, this Court entertained a Motion for Lead Plaintiff's Fees and Attorney's Fees by Plaintiff, James Gensch. The Court considered all paper submissions by both parties, and held Oral Argument on October 15, 2010. We granted Plaintiff's Motion in part, granting attorneys fees in the amount of \$93,264.37, and declined to grant a Lead Plaintiff stipend. This letter is to inform the parties of the reasoning behind the Court's decision.

Rule 4:42-9(b) requires that "all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a). The affidavit shall also include a recitation of other factors pertinent in the evaluation of the services rendered, the amount of the allowance applied for, and an itemization of disbursements for which reimbursement is sought."

Pursuant to RPC 1.5(a) "[a] lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

Litton Industries, Inc. v. IMO Industries, Inc., 200 N.J. 372 (N.J. 2009) details the court's function in determining a reasonable amount of attorneys fees to be awarded. It considers the threshold issue of "whether the party seeking the fee prevailed in the litigation." The party seeking fees must establish that ht lawsuit was causally related to securing the relief obtained. A fee award is justified if the party's efforts are a necessary and important factor in obtaining relief. Id. (quoting Singer v. State, 95 N.J. 487, cert. denied, 469 U.S. 832 (1984)).

It is clear that Plaintiff is the prevailing party in this matter, and that Counsel's efforts were integral in obtaining such relief. Moreover, Counsel has satisfied the requirements set forth in Rule 4:42-9(b), because an Affidavit of Service has been provided to this Court which states the allowance applied for, the amount of disbursements for which reimbursement is sought, and the time incurred by counsel for the services rendered.

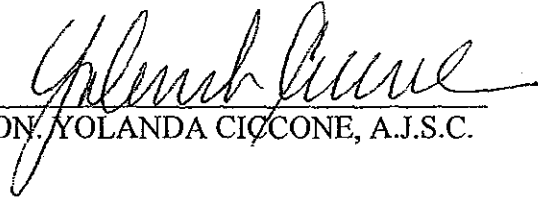
The starting point in awarding attorney's fees is the determination of "lodestar," which equals the number of hours reasonably expended multiplied by a reasonable hourly rate. In this case, 309.3 hours by a rate of \$350 per hour. We then reduced the lodestar by unnecessary billings, billings for two attorneys where the task was reasonably allotted to a single attorney, duplicative work, or work which contributed to the litigation of similar cases in other counties.

We have also taken into consideration the novelty, notoriety of this case, and the expertise and effort required to litigate a class action. Additionally, we recognize that nearly identical actions have been litigated in many other counties. Ultimately, the Court awarded 93,265.37 for costs and fees.

With regard to the Lead Plaintiff stipend, it does not seem that Plaintiff has suffered any injury as a result of his participation in this litigation. Therefore, no award was granted.

If you have any further questions or concerns please contact my law clerk, Leah R. Glasofer, at (908) 231-7061.

Very Truly,

A handwritten signature in cursive script, appearing to read "Yolanda Ciccone", written in black ink. The signature is positioned above a horizontal line.

HON. YOLANDA CICCONE, A.J.S.C.

GAETANO M. DE SAPIO, ESQ.  
HUNTERDON COUNTY COUNSEL  
1110 Harrison Street, Suite H  
Frenchtown, New Jersey 08825  
Telephone: (908) 996-6240  
Attorney for Defendants

---

James Gensch, on behalf of himself  
and all others similarly situated,

Plaintiffs,

vs.

Hunterdon County Clerk's Office,  
and Mary H. Melfi, in her capacity  
as the Hunterdon County Clerk,  
and Hunterdon County through the  
Hunterdon County Board of  
Chosen Freeholders,

Defendants.

---

SUPERIOR COURT OF NEW JERSEY  
HUNTERDON COUNTY  
LAW DIVISION

Civil Action

Docket No. HNT-L-307-07

NOTICE OF MOTION TO STAY  
ORDER OF FEBRUARY 7, 2011

TO: SANDER R. FRIEDMAN, ESQ.  
Friedman Doherty, LLC  
125 North Route 73  
West Berlin, NJ 08091  
Attorney for the Plaintiff

PLEASE TAKE NOTICE, that at 9:00 A.M. at the date and place described below, the undersigned attorney for defendants, Hunterdon County Board of Chosen Freeholders and Hunterdon County Clerk's Office, will apply for the following relief:

1. RELIEF SOUGHT:

(a) Entry of an Order pursuant to Court Rule 2:9-5, to Stay the Order of February 7, 2011 awarding plaintiff \$93,265.37 in attorney's fees, pending Appeal.

2. RETURN DATE: March 18, 2011

3. PLACE: Courtroom of the Honorable Yolanda Ciccone, A.J.S.C.  
Somerset County Courthouse

20 North Bridge Street  
Somerville, New Jersey 08876

4. DATE OF:

- (a) Pretrial Conference: None applicable
- (b) Calendar Call: None applicable
- (c) Trial Date: None applicable

5. WHETHER ORAL ARGUMENT OF MOTION IS REQUESTED: No

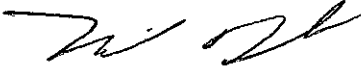
6. DATE OF CONFERENCE OR ATEMPTED CONFERENCE PER RULE 1:6-2,

IF APPLICABLE: None applicable

7. PAPERS FILED IN SUPPORT OF THIS MOTION:

- (a) Certification of Gaetano M. De Sapio, Esq, Hunterdon County Counsel
- (b) Letter Brief
- (c) Proposed Order

Date: February 23, 2011

  
\_\_\_\_\_  
MICHAEL A. DE SAPIO, ESQ.  
Attorney for Defendant

GAETANO M. DE SAPIO, ESQ.  
HUNTERDON COUNTY COUNSEL  
1110 Harrison Street, Suite H  
Frenchtown, New Jersey 08825  
Telephone: (908) 996-6240  
Attorney for Defendants

---

James Gensch, on behalf of himself  
and all others similarly situated,

Plaintiffs,

vs.

Hunterdon County Clerk's Office,  
and Mary H. Melfi, in her capacity  
as the Hunterdon County Clerk,  
and Hunterdon County through the  
Hunterdon County Board of  
Chosen Freeholders,  
Defendants.

SUPERIOR COURT OF NEW JERSEY  
HUNTERDON COUNTY  
LAW DIVISION

Civil Action

Docket No. HNT-L-307-07

CERTIFICATION OF GAETANO M.  
DE SAPIO IN SUPPORT OF  
APPLICATION TO STAY  
ORDER OF FEBRUARY 7, 2011

---

I, GAETANO M. DE SAPIO, of full age, certify as follows:

1. I am the County Counsel for the County of Hunterdon. I am familiar with the actions of the Hunterdon County Board of Chosen Freeholders and the County Clerk since the Appellate Division decision in this matter, and am personally familiar with the facts set forth below.

2. This Certification is being made in support of the County's Motion for a Stay of the Order of February 7, 2011, that was entered in this matter by the Honorable Yolanda Ciccone, A.J.S.C., awarding plaintiff fees against the County of Hunterdon in the amount of \$93,265.37. A copy of the Order is attached as "Exhibit A".

3. The County has authorized an Appeal of the Order. Notice of Appeal must be filed with the Appellate Division by March 17, 2011.

4. As the County has indicated in previous Motion papers, the decisions of other trial courts on the same issue of attorney's fees, have differed from this Court's decision of February 7, 2011.

5. On May 14, 2010, the Honorable Bernadette DeCastro, J.S.C., issued an opinion in Smith v. Hudson County Register, HUD-L-5261, denying the plaintiff attorney's fees on the exact same issue as this matter. Mr. Sander Friedman, Esq., also the counsel for the plaintiff in Hudson, subsequently filed an appeal.

6. On January 24, 2011, oral argument was held before the Appellate Division of Superior Court. The issues raised before the Appellate Division in Smith include whether the plaintiff is a "prevailing party" under OPRA's fee shifting statute and is entitled an award of attorney's fee from defendants; whether plaintiff is entitled to attorney's fee under the catalyst theory; and whether the default rate of .25 cents per page for self-service copying constituted a "denial of access" under OPRA so as to entitle plaintiff's counsel to an award of attorney's fees.

7. The Hunterdon County defendants have raised identical legal issues in this case as have been presented in Smith.

8. Based upon the fact that the same issues have been raised before the Appellate Division in Smith, the County of Hunterdon seeks to preserve their Appellate rights on these issues, and to raise any other issues based on facts that are specific to this case, as grounds for reversal of this court's Order of February 7, 2011, awarding attorney's fees to the plaintiff.

9. It is anticipated the Appellate Division's decision in Smith will influence the outcome of this case.

10. Hunterdon County is experiencing, together with the balance of the public entities in

the State of New Jersey, extreme financial pressures. The \$93,265.37 represented in the Order does not currently exist in the Hunterdon County budget. Hunterdon County has been making efforts to deal with the fiscal crisis, and most recently laid off nineteen (19) County employees in order to reduce its spending. It is in the public interest to stay the award pending an appeal to determine whether the County must raise and pay these funds.

I 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.

Dated: February 23, 2011



GAETANO M. DE SAPIO, ESQ.  
Attorney for Defendant,  
County of Hunterdon

GAETANO M. DE SAPIO  
ATTORNEY AT LAW

OLDE THEATRE CENTRE  
1110 HARRISON STREET - SUITE H  
FRENCHTOWN, NEW JERSEY 08825

AARON R. CULTON\*  
MICHAEL A. DE SAPIO

(908) 996-6240  
FACSIMILE: (908) 996-6928

Direct e-mail:

[mdesapio@hunterdonlawyer.com](mailto:mdesapio@hunterdonlawyer.com)

February 23, 2011

\*NEW JERSEY &  
PENNSYLVANIA BARS

The Honorable Yolanda Ciccone, A.J.S.C.  
Superior Court of New Jersey  
Somerset County Courthouse  
20 N. Bridge Street  
P.O. Box 300  
Somerville, NJ 08876-1262

Re: James Gensch, vs.  
Hunterdon County Clerk's Office, et al  
Docket No. HNT-L-307-07  
*Motion Returnable March 18, 2011*

Dear Judge Ciccone:

This office serves as counsel to the County of Hunterdon.

Please accept this letter brief in lieu of a more formal submission in support of the County's Motion for a Stay of the Order of February 7, 2011. I will rely on the statement of facts recited in the accompanying certification of Gaetano M. De Sapio, Esq.

On February 7, 2011, this Court entered an Order awarding attorney's fees to the plaintiff against the County of Hunterdon in the amount of \$93,265.37. The court rules allow for a stay of a judgment, pending appeal, in a civil action adjudicating liability for monetary damages. *Rule 2:9-5(a)*. (It should be noted that the County is exempt from posting a bond for the judgment pursuant to *Rule 2:9-6(b)* as it is a public entity.)

As the Court is aware, a number of trial courts throughout the State have addressed the same legal issue of attorney's fees under OPRA which was the subject matter of the February 7<sup>th</sup> Order, with differing results. In light of that fact, the County has authorized an appeal to the February 7<sup>th</sup> Order. Given the lack of consistency from the trial courts throughout the State on the same legal issue, a stay of the Order is warranted in this case as there is a meritorious claim on appeal. The County submits that there is a strong likelihood of success for all the reasons recited in previous submissions to the court and the fact that other trial courts have denied attorney's fees to the plaintiff.

The Honorable Yolanda Ciccone, A.J.S.C.  
February 23, 2011  
Page 2

The same legal issue has also been raised in the pending Appellate Division matter of Smith v. Hudson County Register, et al, HUD-L-5261. Mr. Friedman, also the plaintiff's counsel in Smith, has appealed the denial of attorney's fees from Judge DeCastro. Oral argument was held at the appellate division on January 24, 2011. The issues before the Appellate Division include: 1) whether the plaintiff is a "prevailing party" under OPRA's fee shifting statute; 2) whether the .25 cent per page fee constituted a "denial of access"; and, 3) whether the plaintiff is entitled to attorney's fees under the catalyst theory.

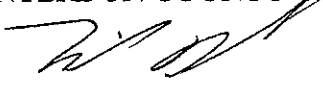
It is anticipated the Appellate Division's decision in Smith will influence the outcome of this case.

Additionally, at a time of financial crisis for all public entities throughout the State, the County would be extremely prejudiced if it were compelled to raise and pay \$93,265.37 before it had the opportunity to exhaust its right to appeal the immediate legal issues.

For all the reasons set forth above and in the supporting Certification of Gaetano M. De Sapiro, Esq., the County respectfully requests the Court to enter an Order staying the Order of February 7, 2011 awarding attorney's fees to the plaintiff, pending appeal, pursuant to Rule 2:9-5.

Respectfully submitted,

LAW OFFICES OF GAETANO M. DE SAPIO  
HUNTERDON COUNTY COUNSEL

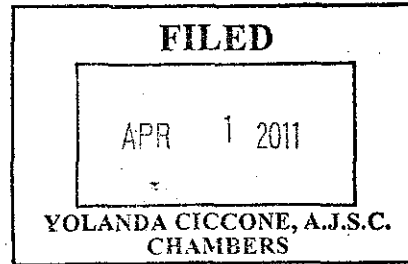
  
By: MICHAEL A. DE SAPIO

MDS:ms  
5929

Enclosures

cc: Cynthia J. Yard, County Administrator  
Mary H. Melfi, County Clerk  
Sander D. Friedman, Esq.

THE COURT'S FINDINGS OF FACT  
AND CONCLUSIONS OF LAW WERE  
PLACED ON THE RECORD IN OPEN  
COURT ON 4/1/11



GAETANO M. DE SAPIO, ESQ.  
HUNTERDON COUNTY COUNSEL  
1110 Harrison Street, Suite H  
Frenchtown, New Jersey 08825  
Telephone: (908) 996-6240  
Attorney for Defendants

James Gensch, on behalf of himself  
and all others similarly situated,

Plaintiffs,

vs.

Hunterdon County Clerk's Office,  
and Mary H. Melfi, in her capacity  
as the Hunterdon County Clerk;  
and Hunterdon County through the  
Hunterdon County Board of  
Chosen Freeholders,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
HUNTERDON COUNTY  
LAW DIVISION

Civil Action

Docket No. HNT-L-307-07

ORDER STAYING ORDER OF  
FEBRUARY 7, 2011

**DENIED**

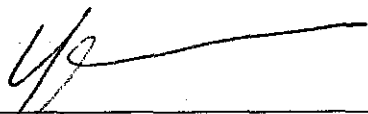
The defendant filed a Notice of Motion for a Stay of the Order of February 7, 2011 awarding \$93,265.37 in attorney's fees to the plaintiff pending appeal pursuant to Rule 2:9-5. The Motion was returnable on March 18, 2011. The plaintiff filed Opposition to the plaintiff's motion. The plaintiff is represented by Sander D. Friedman, Esq. The defendants are represented by Gaetano M. De Sapio, Esq. The Court having evaluated the papers filed by counsel, determines that good cause exists for the entry of this Order.

IT IS, THEREFORE, ON <sup>April</sup> ~~MARCH~~ 1, 2011, ORDERED that:

1. The Order entered in this matter on February 7, 2011 is hereby STAYED pending

defendants' exhausting its appeal in this matter.

It is further ORDERED that a copy of this Order shall be served upon plaintiff's counsel within 7 days from the entry of this Order.

  
\_\_\_\_\_  
YOLANDA CICCONE, A.J.S.C.

PAPERS CONSIDERED BY COURT PURSUANT TO RULE 1:6-1

- X   1. Notice of Motion
- X   2. Moving Party's Certification
- X   3. Moving Party's Letter Brief
- X   4. Reply Certification
- X   5. Plaintiff's Brief
- X   6. Moving Party's Reply
- 7. Other:

## C

Superior Court of New Jersey,  
Appellate Division.

Dean SMITH, on behalf of himself and all others  
similarly situated, Plaintiff-Appellant,

v.

HUDSON COUNTY REGISTER and Willie J.  
Flood, in his capacity as the Hudson County Re-  
gister and Hudson County, through the Hudson  
County Board Of Chosen Freeholders, Defendants-  
Respondents.

James Gensch, on behalf of himself and all others  
similarly situated, Plaintiff-Appellant,

v.

Hunterdon County Clerk's Office and Mary H.  
Melfi, in her capacity as the Hunterdon County  
Clerk, and Hunterdon County, through the Hunter-  
don County Board of Chosen Freeholders, Defend-  
ants-Respondents.

Martin O'Shea, on behalf of himself and all others  
similarly situated, Plaintiff-Appel-  
lant/Cross-Respondent,

v.

Sussex County Clerk's Office and Erma Gormley,  
in her capacity as the Sussex County Clerk, Sussex  
County, and the Sussex County Board of Chosen  
Freeholders, Defendants-Respond-  
ents/Cross-Appellants.

Argued Sept. 16, 2009.

Decided Feb. 10, 2010.

**Background:** Private investigator filed class action against county register and county, contesting the fees charged to reproduce government records on county's self-service copiers and printers. The Superior Court, Law Division, Hudson County, dismissed the complaint. Private investigator appealed. In a second case, homeowner filed class action against county clerk's office, county clerk, and county, asserting that the costs they had charged him for self-serve photocopying of government records was excessive. The Superior Court, Law Di-

vision, Hunterdon County, entered judgment for defendants. Homeowner appealed. In a third case, retired newspaper reporter filed class action against county clerk's office, county, and county clerk, contending that he had been overcharged for copies of real estate records. The Superior Court, Law Division, Sussex County, granted defendants summary judgment. Retired reporter appealed, and the three appeals were consolidated.

**Holdings:** The Superior Court, Appellate Division, [Sabatino](#), J.A.D., held that:

- (1) plaintiffs' alleged voluntary payment of counties' respective charges for copies of requested government records did not estop them from challenging those charges as excessive;
- (2) plaintiffs were not obligated to lodge a formal protest with counties before filing suit;
- (3) this decision applied prospectively only, effective at the start of the next State fiscal year;
- (4) counties and other government agencies may not charge requestors more than the actual costs of photocopying government records;
- (5) if charges imposed for photocopying government records are equal to or less than those stated in sliding-scale fee schedule contained within Open Public Records Act (OPRA), a challenger would have burden of demonstrating that agency's actual costs were indeed lower; and
- (6) if government agency's charges for photocopying government records exceed rates stated in sliding-scale fee schedule contained within OPRA, then the burden will be placed on the agency to demonstrate that its actual costs are higher than those enumerated rates and are therefore justified.

Judgments of Law Division reversed and remanded.


West Headnotes

[1] **Payment 294**  82(3)

294 Payment


**294V Recovery of Payments****294k82 Voluntary Payments in General**

**294k82(3) k.** Character of payment in general. [Most Cited Cases](#)


**Records 326**  **15****326 Records****326I In General**

**326k15 k.** Making and use of copies. [Most Cited Cases](#)


Citizens' alleged voluntary payment of counties' respective charges for copies of requested government records did not estop them from challenging those charges as excessive; citizens had no realistic choice but to pay the respective county's stated fee in order to obtain such copies, the fee was non-negotiable, and there was no proof that citizens knew the pertinent county's actual costs of reproduction when they obtained their copies.

**[2] Payment 294**  **82(1)****294 Payment****294V Recovery of Payments****294k82 Voluntary Payments in General****294k82(1) k.** In general. [Most Cited Cases](#)

The volunteer payment rule is an equitable doctrine that has been developed to limit the circumstances in which a party can be forced to repay funds that it has already received.


**[3] Payment 294**  **82(1)****294 Payment****294V Recovery of Payments****294k82 Voluntary Payments in General****294k82(1) k.** In general. [Most Cited Cases](#)

The "volunteer payment rule" generally provides that when a person has voluntarily overpaid another party, particularly a government agency, that person may not obtain a refund of the excessive amount, absent a showing of fraud, duress, extortion, mistake of fact, or some other special justification.

**[4] Payment 294**  **82(2)****294 Payment****294V Recovery of Payments****294k82 Voluntary Payments in General**


**294k82(2) k.** What constitutes voluntary payment. [Most Cited Cases](#)

To be voluntary, for purposes of voluntary payment rule, a payment must be made with knowledge that there is no compulsion to pay.

**[5] Records 326**  **15****326 Records****326I In General**

**326k15 k.** Making and use of copies. [Most Cited Cases](#)

Citizens who suspected that fees charged by counties for copies of requested government records exceeded the actual costs involved were not obligated to lodge a formal protest with the counties before filing suit. *N.J.S.A. 47:1A-5(b)*.

**[6] Records 326**  **50****326 Records****326II Public Access**

**326II(B) General Statutory Disclosure Requirements**

**326k50 k.** In general; freedom of information laws in general. [Most Cited Cases](#)

Purpose of Open Public Records Act is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process. *N.J.S.A. 47:1A-1 to 47:1A-13*.

**[7] Statutes 361**  **181(1)****361 Statutes****361VI Construction and Operation****361VI(A) General Rules of Construction****361k180 Intention of Legislature****361k181 In General**

**361k181(1) k.** In general. [Most Cited Cases](#)

**Statutes 361**  **184**

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k184 k. Policy and purpose of act.

Most Cited Cases

In resolving questions of statutory construction, courts endeavor to effectuate the legislative intent in light of the language used and the objects sought to be achieved.

**[8] Clerks of Courts 79** ⚔️23

79 Clerks of Courts

79k10 Compensation and Fees of Clerks of State Courts

79k23 k. Copies and duplicates. **Most Cited Cases**

**Records 326** ⚔️15

326 Records

326I In General

326k15 k. Making and use of copies. **Most Cited Cases**

Copying charges imposed by counties pursuant to statute setting fees for filing, indexing, entering or recording certain documents in office of county clerk did not constitute fees that were otherwise prescribed by law or regulation within meaning of section of Open Public Records Act providing that a copy of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. *N.J.S.A. 22A:2-29, 47:1A-5* (b).

**[9] Clerks of Courts 79** ⚔️23

79 Clerks of Courts

79k10 Compensation and Fees of Clerks of State Courts

79k23 k. Copies and duplicates. **Most Cited Cases**

The copying charges set forth in statute setting fees for filing, indexing, entering or recording certain documents in office of county clerk do not ap-

ply to self-serve copies. *N.J.S.A. 22A:2-29*.

**[10] Records 326** ⚔️15

326 Records

326I In General

326k15 k. Making and use of copies. **Most Cited Cases**

The sliding-scale fee schedule contained within section of Open Public Records Act providing that a copy of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation does not comprise, in and of itself, a law or regulation that otherwise controls the applicable copying rate. *N.J.S.A. 47:1A-5*(b).

**[11] Records 326** ⚔️15

326 Records

326I In General

326k15 k. Making and use of copies. **Most Cited Cases**

Copying fee schedules that may be formally adopted by municipal or county governments do not qualify as the other law or regulation referred to in section of Open Public Records Act providing that a copy of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. *N.J.S.A. 47:1A-5*(b).

**[12] Records 326** ⚔️15

326 Records

326I In General

326k15 k. Making and use of copies. **Most Cited Cases**

Reference to “law or regulation” in section of Open Public Records Act providing that a copy of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation connotes a statute, regulation, constitutional provision, or other legal mandate emanating from the federal or state government, not from a county or local agency or a records custodian. *N.J.S.A. 47:1A-5*(b).

**[13] Statutes 361** ⚔️181(2)

**361 Statutes****361VI Construction and Operation****361VI(A) General Rules of Construction****361k180 Intention of Legislature****361k181 In General****361k181(2) k. Effect and consequences.****Most Cited Cases**

Statutory interpretations leading to absurd or unreasonable results are to be avoided.

**[14] Statutes 361 ↻181(1)****361 Statutes****361VI Construction and Operation****361VI(A) General Rules of Construction****361k180 Intention of Legislature****361k181 In General****361k181(1) k. In general.****Most Cited Cases**

When a statute is ambiguous, the court must construe the statute in a way that will best effectuate the Legislature's intent.

**[15] Statutes 361 ↻188****361 Statutes****361VI Construction and Operation****361VI(A) General Rules of Construction****361k187 Meaning of Language****361k188 k. In general.****Most Cited Cases**

Courts need to imbue meaning to all of the words of a statutory provision.

**[16] Records 326 ↻15****326 Records****326I In General****326k15 k. Making and use of copies.****Most Cited Cases**

Open Public Records Act does not require a government agency to continually re-calculate its actual costs and establish a new copying rate every time a citizen makes copies of a government record; instead, it requires simply that the government agency re-calibrate its copying charge sched-

ule with reasonable periodic frequency, which would be on at least an annual basis. [N.J.S.A. 47:1A-5\(b\)](#).

**[17] Records 326 ↻15****326 Records****326I In General****326k15 k. Making and use of copies.**

**Most Cited Cases**  
For purposes of section of the Open Public Records Act providing that counties and other government agencies may not charge requestors more than the actual costs of photocopying government records, actual per-page costs may be reasonably approximated; a margin of error of a penny or two in the per-page rate is tolerable. [N.J.S.A. 47:1A-5\(b\)](#).

**[18] Records 326 ↻15****326 Records****326I In General****326k15 k. Making and use of copies.**

**Most Cited Cases**  
The costs may be averaged for the copy equipment used in all county offices, for purposes of section of the Open Public Records Act providing that counties and other government agencies may not charge requestors more than the actual costs of photocopying government records. [N.J.S.A. 47:1A-5\(b\)](#).

**[19] Courts 106 ↻100(1)****106 Courts****106II Establishment, Organization, and Procedure****106II(H) Effect of Reversal or Overruling****106k100 In General****106k100(1) k. In general; retroactive or prospective operation.**

**Most Cited Cases**  
Appellate Division's decision that unless and until the Legislature amends the Open Public Records Act to specify otherwise, or some other statute or regulation applies, counties must charge requestors of government records no more than the

reasonably approximated actual costs of copying such records applied prospectively only, effective at the start of the next State fiscal year. [N.J.S.A. 47:1A-5\(b\)](#).

#### [20] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

Counties and other government agencies may not charge requestors more than the actual costs of photocopying government records. [N.J.S.A. 47:1A-5\(b\)](#).

#### [21] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

If charges imposed for photocopying government records are equal to or less than those stated in sliding-scale fee schedule contained within Open Public Records Act, a challenger would have the burden of demonstrating that the agency's actual costs were indeed lower, and if the challenger fails to sustain that burden, the agency will prevail and may continue to charge its existing rates. [N.J.S.A. 47:1A-5\(b\)](#).

#### [22] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

If government agency's charges for photocopying government records exceed the rates stated in the sliding-scale fee schedule contained within the Open Public Records Act, then the burden will be placed on the agency to demonstrate that its actual costs are indeed higher than those enumerated rates and are therefore justified. [N.J.S.A. 47:1A-5\(b\)](#).

#### [23] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

In applying burden-shifting construction of section of the Open Public Records Act providing that counties and other government agencies may not charge requestors more than the actual costs of photocopying government records, if the proofs are inconclusive or in equipoise, then the outcome shall be in favor of the party who does not have the burden of persuasion. [N.J.S.A. 47:1A-5\(b\)](#).

#### [24] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

The conventional preponderance-of-the-evidence standard for civil cases shall apply for purposes of burden-shifting construction of section of the Open Public Records Act providing that counties and other government agencies may not charge requestors more than the actual costs of photocopying government records. [N.J.S.A. 47:1A-5\(b\)](#).

#### [25] Records 326

326 Records

326I In General

326k15 k. Making and use of copies. [Most Cited Cases](#)

Burden-shifting construction of section of the Open Public Records Act providing that counties and other government agencies may not charge requestors more than the actual costs of photocopying government records shall be observed, whether a dispute over the propriety of copying rates is litigated in a court or is presented administratively to the Government Records Council. [N.J.S.A. 47:1A-5\(b\)](#).

**\*\*118** [Sander D. Friedman](#) and [Wesley G. Hanna](#), West Berlin, argued the cause for appellant Dean

Smith in **A-1762-08T2**, appellant James Gensch in A-2507-08T3 and appellant/cross-respondent Martin O'Shea in A-2518-08T3 (Friedman Doherty, LLC, attorneys; Mr. Hanna, on the brief).

[Steven L. Menaker](#), Secaucus, argued the cause for respondents Hudson County Register, Willie J. Flood and Hudson County in **A-1762-08T2** (Chasan Leyner & Lamparello, PC, attorneys; Mr. Menaker, of counsel; Mr. Menaker and [Kirstin Bohn](#), on the brief).

Michael A. De Sapio, argued the cause for respondents Hunterdon County Clerk's Office, Mary H. Melfi, and Hunterdon County in A-2507-08T3 (Mr. De Sapio and [Gaetano M. De Sapio](#), Frenchtown, on the brief).

Robert B. Campbell, argued the cause for respondents/cross appellants Sussex County Clerk's Office, Erma Gormley, Sussex County, and the Sussex County Board of Chosen Freeholders in A-2518-08T3 (McConnell, Lenard & Campbell, LLP, attorneys, Stanhope; [Dennis R. McConnell](#), of counsel; Mr. Campbell, on the brief).

Daniel O'Mullen, Morris County Counsel, and [Michael E. Hubner](#), Special County Counsel, for amici curiae Morris County Clerk's Office (Mr. O'Mullen and Mr. Hubner, of counsel; James T. Bryce, on the brief).

Eric M. Bernstein & Associates, L.L.C., Warren, for amici curiae Passaic County Clerk, [Karen Brown](#) and Passaic County Clerk's Office ([Eric Martin Bernstein](#), of counsel; Mr. Bernstein and [Philip G. George](#), on the brief).

[Thomas F. Kelso](#), Middlesex County Counsel, attorney for amici curiae Middlesex County Clerk's Office, Middlesex County Clerk, Elaine Flynn, and Middlesex County ([Benjamin D. Leibowitz](#), Deputy County Counsel, on the brief).

Chasan Leyner & Lamparello, PC, Secaucus, for amici curiae Hudson County, Hudson County Register, Willie J. Flood, Mercer County Clerk's Of-

fice, Mercer County Clerk, [Paula Sollami-Covello](#), and Mercer County ([Steven L. Menaker](#), of counsel; Mr. Menaker and [Kirstin Bohn](#), on the brief).

Before Judges [STERN](#), [GRAVES](#) and [SABATINO](#).

The opinion of the court was delivered by

[SABATINO](#), J.A.D.

**\*546** In these three back-to-back appeals, which we hereby consolidate for purposes of this opinion, plaintiffs each argue that **\*\*119** the trial court erred in dismissing their respective and similar lawsuits against three defendant Counties (Hudson, Hunterdon, and Sussex) and various officials and sub-units of those Counties. Plaintiffs are all represented by the same law firm. They contend that defendants have overcharged them, and overcharged other members of the public, for the copying of government records maintained at County offices, in violation of both the Open Public Records Act ("OPRA"), *N.J.S.A. 47:1A-1* to -13, and the common law. Defendants, joined by four other Counties (Morris, Middlesex, Mercer, and Passaic) appearing as *amici curiae*, assert that their copying charges comport with OPRA and the common law. Defendants also contend that plaintiffs' lawsuits are procedurally flawed in numerous respects.

For the reasons stated herein, we reverse the trial court's orders denying relief in all three cases. We hold that unless and until the Legislature amends OPRA to specify otherwise, or some other statute or regulation applies, the Counties must charge plaintiffs and other similar requestors of government records no more than the reasonably approximated "actual costs" of copying such records. The burden of proving or disproving compliance with that "actual costs" mandate will vary, depending upon whether the charges in question exceed certain fee levels identified in the second sentence of *N.J.S.A. 47:1A-5(b)*.

Because of the fiscal and administrative impacts upon the Counties and other governmental

agencies that are likely to result from this holding, we give our decision only prospective effect and delay its effective date until after the current State fiscal year.

**\*547 I.**

The facts and procedural history of these three cases, which turn on questions of law and statutory interpretation, are mainly undisputed.

*The Hudson County (“Smith”) Litigation (A-1762-08).*

Plaintiff in A-1762-08, Dean Smith, is a private investigator. As part of his work as an investigator, Smith searches government records kept at the offices of County government agencies. At times, Smith needs to obtain copies of those records. According to Smith's complaint, on three separate dates (August 1, 2007; October 3, 2007; and August 22, 2008), he copied deeds on the self-serve photocopiers provided at the Hudson County Register's Office. Depending on the age of the deed, such copies are made by either using self-service copiers or by printing a digitized image from a computer. In either instance, Hudson County charges \$0.25 per page for such copies. Smith suspected that the \$0.25 charge exceeded the County's actual expense in producing the copies. Nevertheless, Smith paid the charges, apparently without making any contemporaneous protest.

On October 23, 2007, Smith filed a class action complaint in the Law Division against the Hudson County Clerk's Office, contesting the fees charged to reproduce government records on the County's self-service copiers and printers. Smith sought to certify the class, which would include all persons who had made copies or printouts at the Hudson County offices and had likewise paid the County \$0.25 per page. He also sought a court-ordered mathematical determination of the County's actual costs in making the copies. Because Smith had mistakenly named improper defendants, he subsequently amended his complaint to assert the same claims against the Hudson County Register, Willie

J. Flood, and Hudson County **\*\*120** through its Board of Freeholders (collectively “the Hudson defendants”).

The trial court denied Smith's motion to certify the class, finding that he procedurally had no claim because he had voluntarily **\*548** paid Hudson County the \$0.25 copying fee. Given that ruling, the court found it unnecessary to ascertain Hudson County's actual costs of copying.

Smith filed a motion for reconsideration. The trial court denied it, and also dismissed his complaint. Smith then filed his present appeal.

*The Hunterdon County (“Gensch”) Litigation (A-2507-08).*

James Gensch, plaintiff in A-2507-08, is a homeowner who resides in Hunterdon County. According to Gensch, he was interested in finding out whether and to what extent his property was encumbered by any easements. Consequently, on April 27, 2007, Gensch went to the Hunterdon County Clerk's Office to obtain a copy of his deed.

For records filed prior to October 2000, Hunterdon County maintained bound volumes with the Registry of Deeds. The contents of those volumes could be reproduced on self-serve copiers located in the County offices. However, deeds recorded in Hunterdon County after October 2000 were only available as digitized images viewable from computers, and copies could be made on attached printers. Hunterdon County charged \$0.25 for such copies, whether they were reproduced on the self-serve copiers or on the digital printers.

On May 8, 2007, Gensch filed a complaint in the Law Division against the Hunterdon County Clerk's Office, the County Clerk, and Hunterdon County (“the Hunterdon defendants”), asserting that the costs they had charged him for self-serve photocopying were excessive. After the Hunterdon defendants answered, Gensch filed a motion for class certification. He also sought to determine

Hunterdon County's actual costs of making copies. The trial court granted the motion to certify the class. However, the court found it premature to determine the County's actual costs of making copies because additional data was needed.

The Hunterdon defendants then filed with the court a summary of items they believed were necessary to determine actual costs. \*549 Gensch, meanwhile, re-filed his motion to compel a determination of actual costs.

On April 15, 2008, the trial court ruled that the components of Hunterdon County's actual costs of copying consisted of: (1) paper, (2) toner or ink, (3) cost of acquiring the self-service equipment, (4) maintenance contract, (5) repairs not covered by the contract, (6) electricity used in the copying and printing process, and (7) time spent on computer terminals. Neither party disputed this breakdown of the cost components.

The parties in the Hunterdon action cross-moved for summary judgment. As part of the summary judgment record, the Hunterdon defendants certified that the total number of copies made on the self-serve copiers and printers between May 2001 and August 2008 was 1,598,563, and that the total amount the County collected for such copying was \$399,640.74. They indicated that the County's actual per-page cost was \$0.07, but when the costs of the computer equipment and imaging system were factored into the analysis, the County's per-page cost was \$0.31. If Hunterdon County had charged only \$0.07 per copy, the total amount charged would have been \$111,899.41. Consequently, based on these calculated figures, Gensch alleged that Hunterdon County had overcharged persons by \$287,741.33.

\*\*121 After considering the parties' contentions, the trial court entered judgment for the Hunterdon defendants, finding that \$0.25 per page was permitted by OPRA and by extant case law. Thereafter, Gensch filed a notice of appeal.

*The Sussex County ("O'Shea") Litigation (A-2518-08).*

The third case before us, A-2518-08, was filed in the Law Division in Sussex County by Martin O'Shea, a retired newspaper reporter. O'Shea frequently searches real estate records in the Sussex County offices. To obtain duplicates of such records, he could either photocopy them using self-serve copying machines at the County offices or print digital records using computer printers.\*550 On November 9, 2006, O'Shea made self-serve copies at the Sussex County offices, and was charged \$0.25 per page.

From March 1985 through December 2006, a private entity, the Sussex County Abstractors Partnership ("SCAP"), maintained the self-service copiers at the Sussex County offices, pursuant to an agreement with the Sussex defendants. Although from November 2000 through December 2006, SCAP charged customers \$0.25 per page for copies made on its equipment, it only paid Sussex County \$0.08 per page, which essentially represented space rental and electricity. After paying for supplies, SCAP divided the excess profit among its members.

In January 2007, SCAP transferred ownership of the copying machines to Sussex County. Thereafter, in April 2007, Sussex County lowered the price per copy to \$0.10 per page. Customers generally made more than 20,000 copies per month on the self-service copiers.

In 2007, Sussex County purchased the computer printers for a total of \$11,683.28. Approximately 250,668 computer printouts are produced on these printers every year. After all of the components for printing were accounted for, O'Shea calculated that the actual costs to the Sussex defendants for computer-generated copies were \$0.03 per page and \$0.02 per page for self-serve copies. FN1

FN1. Thereafter, Sussex County again revised its mode of reproducing government records for citizen requestors. As of

November 2007, all public records contained in Sussex County offices were searchable on-line and could be printed at no charge on a home or office computer.

On November 15, 2006, O'Shea filed a class action complaint in the Law Division against the Sussex County Clerk's office, Sussex County, and the Sussex County Clerk (the "Sussex defendants"). O'Shea filed a motion for class certification and also sought a determination of the County's actual copying costs. On May 25, 2007, the trial court granted O'Shea's motions. The court determined that the expenses that make up actual costs consisted of: \*551 (1) paper, (2) toner/ink, (3) the cost of the self-service equipment, and (4) electricity used in the copying and printing process.

Based on the trial court's initial determinations, O'Shea calculated what he believed to be the actual costs of the copies. He moved for summary judgment, contending that he and the other class members had been overcharged. The Sussex defendants, in turn, cross-moved for summary judgment, contending that their copying charges were consistent with OPRA and the applicable case law.

On December 10, 2008, the trial court granted the Sussex defendants summary judgment, dismissing O'Shea's complaint. O'Shea appealed. The Sussex defendants cross-appealed, seeking to preserve certain \*\*122 defenses and arguments that had not been decided by the trial court.

#### *The Participation of Other Counties as Amici.*

While these three appeals were all pending, we granted motions by the Morris County Clerk's Office ("Morris"), the Passaic County Clerk's Office ("Passaic"), the Mercer County Clerk's Office ("Mercer"), and the Middlesex County Clerk's Office ("Middlesex"), to appear as *amici curiae*, all of whom had cases pending with similar facts and issues.<sup>FN2</sup> In addition, we granted a motion by the Hudson defendants to appear as *amicus curiae* in the two related cases from Hunterdon and Sussex,

in which they were not named defendants.

FN2. Passaic filed three identical *amicus* briefs as well as a letter brief. Mercer joined with Hudson and filed two identical *amicus* briefs in A-2507-08 and A-2518-08. Middlesex filed two identical *amicus* briefs in A-2507-08 and A-2518-08. Morris filed one *amicus* brief for all three cases.

## II.

[1] Before we examine the merits of these appeals, we address a procedural argument raised by defendants solely in *Smith* and *Gensch*: namely, whether those two particular plaintiffs are estopped from challenging the Counties' respective copying charges \*552 because they allegedly "volunteered" payment of those charges.<sup>FN3</sup> We reject that argument, essentially because it misconceives the adhesive setting in which Smith, Gensch, and other citizens obtain photocopied records from the County offices.

FN3. The volunteer rule is not asserted in *O'Shea* by the Sussex defendants. We are also mindful that the trial court in *Gensch* did not reach the merits of the Hunterdon defendants' voluntary payment argument.

[2][3] The "volunteer rule" is an equitable doctrine that has been developed to limit the circumstances in which a party can be forced to repay funds that it has already received. The rule generally provides that when a person has voluntarily overpaid another party, particularly a government agency, that person may not obtain a refund of the excessive amount, absent a showing of fraud, duress, extortion, mistake of fact, or some other special justification. *See, e.g., Ross Systems v. Linden Dari-Delite, Inc.*, 35 N.J. 329, 334, 173 A.2d 258 (1961); *Squires Gate, Inc. v. County of Monmouth*, 247 N.J.Super. 1, 10, 588 A.2d 824 (App.Div.1991).

For example, in *N.J. Builders Ass'n v. Borough*

of *Mendham*, 263 N.J.Super. 88, 621 A.2d 985 (App.Div.1993), a case relied upon by both the Hudson and Hunterdon defendants, five builders wanted to connect their new construction to Mendham's water supply system. *Id.* at 91, 621 A.2d 985. Mendham overcharged the builders in order to raise funds to improve the municipal system. *Ibid.* The builders paid those inflated fees, even though they had other options. *Id.* at 92-93, 621 A.2d 985. After the inflated fees had been declared invalid, the builders sought to recover the sums they had paid, which the trial court granted. *Id.* at 93, 621 A.2d 985. We reversed and remanded the matter, allowing the borough to present evidence to support its reliance on the volunteer payment rule. *Id.* at 96, 621 A.2d 985. We reasoned that if the builders had voluntarily paid the connection fee knowing they had other options for connecting to a water supply, they would be barred from recovering the overpayment. *Id.* at 95, 621 A.2d 985. We also noted that the builders had not paid the \*553 sums under duress, and had not contemporaneously protested. *Ibid.*

\*\*123 In *Flammia v. Maller*, 66 N.J.Super. 440, 444, 169 A.2d 488 (App.Div.1961), another key case that defendants cite on this issue, the defendant married a woman who previously had been married to the plaintiff. The woman had divorced the plaintiff in Mexico without his knowledge. After the woman died, the court permitted the plaintiff to inherit from her estate as her lawful husband, finding the Mexican divorce a nullity. *Ibid.* The defendant argued that the plaintiff should also be liable for the decedent's support during the years following the invalid Mexican divorce, when she had cohabited with the defendant. *Id.* at 458, 169 A.2d 488. We rejected that argument. We held that the defendant could not recover from the plaintiff because the defendant had supported her in full knowledge of the facts, even though he had made a mistake of law in not appreciating the invalidity of the Mexican divorce. *Id.* at 459, 169 A.2d 488. The defendant had supported the decedent out of affection for her, and his support was therefore con-

sidered a voluntary gift. *Ibid.* Consequently, recovery of the support payments from the plaintiff was barred by the voluntary payment rule. *Ibid.*

[4] The present circumstances are not comparable. To be voluntary, a payment must be made with knowledge that there is no compulsion to pay. *Jenkins v. Kaplan*, 53 N.J.Super. 582, 588, 148 A.2d 33 (App.Div.1959). Here, Smith, Gensch and other citizens requesting copies of government records from defendants had no realistic choice but to pay the respective County's stated fee in order to obtain such copies. The fee was non-negotiable.

Moreover, the record is barren of proof that either Smith or Gensch knew the pertinent County's actual costs of reproduction when they obtained their copies. Although they clearly had a strong suspicion that the fee charged by the County exceeded the actual costs involved, they did not know that for certain. Plaintiffs may well be "test-case" litigants, but they are not volunteers \*554 estopped from obtaining a remedy for a proven government overcharge.

[5] Nor were plaintiffs obligated to lodge a formal protest with the defendant Counties before filing suit. Nothing in *New Jersey Builders, supra*, requires such a protest, at least where the failure to protest arises not from economic factors but instead from "actions of the government agency." *Id.* at 95, 621 A.2d 985. We suspect that such a formal protest here would have been futile, in light of the Counties' strong and persistent defense, both at the trial level and on the present appeals, of the legality of their copying fees.

For these reasons,<sup>FN4</sup> we reverse the trial court's application of the voluntary payment rule in *Smith*, and further reject the Hunterdon defendants' invocation of that rule in *Gensch*.

FN4. We need not reach the additional rationales offered by plaintiffs for not applying the volunteer rule.

### III.

We now turn to the substance of these appeals. The critical statutory provision implicated here is *N.J.S.A. 47:1A-5(b)*, which has been part of the OPRA statute and remained unaltered since its adoption in 2002. The four sentences of Section 1A-5(b) read as follows:

A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or **\*\*124** regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. Except as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of printed matter shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section.<sup>FN5</sup> If a public agency can demonstrate that its actual costs for **\*555** duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record.

**FN5.** Referring to *N.J.S.A. 47:1A-5(c)*, which authorizes the imposition of a “special service charge” when reproducing a requested record involves “an extraordinary expenditure of time and effort.” *Ibid.*

[*N.J.S.A. 47:1A-5(b).*]

#### A.

Section 1A-5(b) of OPRA has its roots in the Right to Know Law (“RKL”), which was part of the Public Records Act of 1963. In January 1963, various sponsors introduced Assembly Bill 344, a bill designed, among other things, to codify certain as-

pects of *Moore v. Bd. of Chosen Freeholders of Mercer County*, 39 N.J. 26, 30-31, 186 A.2d 676 (1962). The plaintiffs in *Moore* were taxpayers, political candidates, and other citizens who had sought to inspect and photocopy certain government records on file in Mercer County. The Supreme Court ruled that the plaintiffs were not entitled under the common law to make duplicates of those official records with their own photocopying machines, given the risks of the originals being damaged or destroyed during such copying. *Id.* at 30, 186 A.2d 676. However, the Court did find that the government was obligated to copy the records for the plaintiffs “at a reasonable cost,” a sum which ordinarily should not include labor costs. *Id.* at 30-31, 186 A.2d 676.

Attempting to codify these principles after *Moore*, Assembly Bill 344 stated, in its original version, that:

Every citizen of this State shall also have the right during such regular business hours and under the supervision of a representative of the custodian, to copy such records by hand or, if approved by the custodian, by a photographic process specified by the custodian. The custodian of any such records may, to prevent the risk of damage or mutilation thereof, refuse to permit a citizen to photograph records, provided such custodian agrees to make and supply photographic copies thereof to the citizen *upon payment of a reasonable fee therefor which shall approximate actual cost and which, except as otherwise specified by law, shall not exceed 50 cents per page or part thereof.*

[*Assem. B. 344*, 190th Leg. Sess. (1963) (emphasis added).]

On February 4, 1963, the Assembly amended the bill by adding the following underlined language, and omitting the language contained in brackets:

... upon payment of a reasonable fee therefor, to

be fixed by regulation of the board, body, agency, department, commission, authority or officer having such \*556 records which [shall approximate actual cost and which] except as otherwise \*\*125 specified by law, shall not exceed 50 cents per page or part thereof for single copies; lower fees not to exceed 40 cents per page or part page may be fixed for 10 or more copies.

[*Id.* (First Official Copy Reprint).]

On February 11, 1963, the Assembly subsequently omitted the term “reasonable” from the section.

These various changes removed the bill's requirements that the copying fee must approximate an agency's actual cost and that the fee be reasonable. Instead, the revised bill permitted the fee to be set by the governmental custodian, so long as it did not exceed the price guidelines expressed in the statute.

On March 11, 1963, the Assembly again amended the bill omitting the following language:

to be fixed by regulation, of the board, body, agency, department, commission, authority or officer having such records which, except as otherwise specified by law, shall not exceed 50 cents per page or part thereof for single copies lower fees not to exceed 40 cents per page or part page may be fixed for 10 or more copies.

[*Id.* (Third Official Copy Reprint) (emphasis and bracketed material omitted).]

and, instead, adding this text in its place:  
which except as otherwise provided by law, is fixed at 50 cents per page or part page; a fee of 40 cents per page or part page for 10 or more copies of the same page or part page may be fixed by regulation of the officer or department head or by resolution of the board, body, agency, commission, or authority, having such records.

[*Ibid.*]

The bill was passed by the Assembly on March 18, 1963, and by the Senate on April 22, 1963.

On May 6, 1963, Governor Richard J. Hughes vetoed the RKL. He returned the legislation to the Assembly, with the following comments objecting to the bill's allowance of copying by a citizen's own equipment:

There is, however, an aspect of this bill that requires clarification. Assembly Bill No. 344 provides that any person can photocopy, *with his own equipment*, any or all of the public records of government unless the custodian shall find that there is a risk of damage or mutilation of such records in which case copies must be made and supplied to such person at the rate of \$0.50 per page with a lower rate for quantity purchases. *This places on the custodian the unreasonable burden of accommodating as many persons and their equipment as may wish to reproduce \*557 public records unless he can sustain a finding that such equipment constitutes a risk to such documents.* In addition, it would encourage commercial enterprises to reproduce governmental material and information in wholesale quantities because of the low cost involved. Much of this data undoubtedly would have been obtained at great cost to the governmental agency involved. *It is not necessary to the stated public purposes of this bill to so disregard the rights and responsibilities of governmental officials.*

[*Veto Message of Governor Richard J. Hughes with Regard to Assembly Bill No. 344* (May 6, 1963) (Emphasis added).]

Governor Hughes suggested that the following alternative language be incorporated into the bill:

Copies of records shall be made available upon the payment of such price as shall be established by law. If a price \*\*126 has not been established by law for copies of any records, the custodian of such records shall make and supply copies of such records upon the payment of the following fees which shall be based upon the total number

of pages or parts thereof to be purchased without regard to the number of records being copied:

First page to tenth page . . \$0.50 per page, Eleventh page to twentieth page . [\$]0.25 per page, All pages over twenty . [\$]0.10 per page.

If the custodian of any such records shall find that there is no risk of damage or mutilation of such records and that it would not be incompatible with the economic and efficient operation of the office and the transaction of public business therein, he may permit any citizen who is seeking to copy more than 100 pages of records to use his own photographic process, approved by the custodian, upon the payment of a reasonable fee, considering the equipment and the time involved, to be fixed by the custodian of not less than \$5.00 or more than \$25.00 per day.

[*Id.* at 2.]

On the same day, the Assembly amended the bill to reflect the above-quoted language suggested by Governor Hughes. This amended version was reenacted by the Assembly on May 6, 1963, reenacted by the Senate on May 13, 1963 and signed by Governor Hughes on June 7, 1963. Under this revised version of the statute, the highest price that could be charged for a copy of a government record was \$0.50 per page.

There was no requirement in the RKL, as enacted, that a fee be related to a government agency's actual duplication costs. There was also no avenue in the RKL for a public agency to recoup amounts expended in duplicating a record if the duplication cost it more than \$0.50 per page.

\*558 The RKL was subsequently displaced more than three decades later by OPRA.<sup>FN6</sup> OPRA's enactment began in January 2000, when Assemblymen Geist and Collins introduced Assembly Bill No. 1309 ("A-1309"). The bill generally sought to expand the rights of citizens to gain access to government records. Senators Martin and

Baer introduced parallel legislation, Senate Bill No. 2003 ("S-2003"). The new proposed legislation created a "Government Records Council." It also defined more clearly which documents were considered government records subject to public access.

<sup>FN6</sup>. Pertinent documents in the legislative history of OPRA are compiled at <http://www.njstatelib.org/NJLH/lh2001/ch404.htm>.

As initially proposed, the pertinent part of the bill read as follows:

A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation, or if a fee is not prescribed by law or regulation, upon payment of the actual cost of duplicating the record. Except as otherwise provided by law or regulation the fee assessed for the duplication of printed matter shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page. The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy. If a public agency can show that its actual costs for duplication of a government record exceed the foregoing \*\*127 rates, the public agency shall be permitted to charge the actual cost of duplicating the record.

[*Assem. B.* 1309, 209th Leg. Sess. (2000).]

Section 2 of the new bill broadly defined a "government record" as:

any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound recording or in a similar device or any copy thereof ...[.]

[*Ibid.*]

With respect to the issue of copying charges, the Sponsors Statement for S-2003 recited:

The per page fee for the purchase of a copy of a government record is set forth in the bill. Different fees for the purchase of a copy of a record may be established by another statute or by regulation. An agency may charge the actual cost of \*559 duplicating a record when the actual cost exceeds the rates set forth in the bill. Additional charges may apply when copying involves an extraordinary expenditure of time and effort.

[S.B. 2003, 209th Leg. Sess. (2000).]

In a precursor to S-2003, Senator Baer co-sponsored a bill with Senators Kenny and Kyrillos, known as Senate Bill No. 351 (“S-351”). S-351 contained the following pertinent language:

With respect to requests for *copies of records kept on computer media, film, or in any other form which cannot be photocopied, the price charged for copies of such records shall not exceed the reasonable cost which has been incurred by the public agency in making the copy.* For the purposes of this section, “*reasonable cost*” shall mean a fee established by the public agency following guidelines established by the State Records Committee pursuant to section 5 of (this bill) to reimburse it for *its actual cost* in making such records available, including the cost of the time and personnel required to compile and produce the copy or copies.

If the record is maintained for the public agency by an entity other than the public agency, the contract between the public agency and the custodial entity shall specify that the custodial entity may only charge the reasonable cost incurred by that entity to make the copy. *If requested by the purchaser, the public agency or custodial entity shall set forth in writing the basis on which the reasonable cost has been determined.*

[S.B. 351, 209th Leg. Sess. (2000) (emphasis added).]

Although S-351 was not enacted as part of OPRA, its references to “actual cost” and “reasonable cost” shed light upon the copying charge provisions in the bills that ultimately were adopted.

During the public hearings on OPRA, there was some recorded commentary about the proposed statute's copying provisions. In particular, at a Senate hearing on March 9, 2000, Ron Miskoff, the president of the New Jersey Society of Professional Journalists, questioned the copying charges in the bills. Miskoff characterized the charges as being inflated, and out of step with the times and with copying charges established in other states. *See Public Hearing on S.B. 161, 351, 573, and 866 Before the S. Judiciary Comm.*, 209th Leg. Sess. 85 (2000).

A-1309 was passed by the Assembly on June 29, 2000. It was then amended by the Senate on May 3, 2001 to reconcile it with S-2003. The reconciled bill, known as OPRA, was passed by both \*560 houses in January 2002 and signed into law by Governor\*\*128 Donald T. DiFrancesco on January 8, 2002. FN7

FN7. In 2008, numerous bills were introduced in the Assembly and Senate, which sought to clarify or revise the copying fees set forth in *N.J.S.A. 47:1A-5(b)*. None of those measures was enacted into law during the now-expired 213th Legislative Session.

#### B.

Having traced this legislative history, we now turn to the parties' competing interpretations of the meaning of Section 1A-5(b).

Plaintiffs argue that the provision should be read to mandate that the government always charge a citizen the “actual costs” of duplicating a govern-

ment record, unless another statute or State regulation prescribes a different rate. In making this argument, plaintiffs place great emphasis on the first sentence of *N.J.S.A. 47:1A-5(b)*, which calls for payment of “the actual cost of duplicating the record” where a different rate is not otherwise prescribed; and the fourth and final sentence of *N.J.S.A. 47:1A-5(b)*, which authorizes the public agency to charge “the actual cost of duplicating [a] record” where it exceeds the levels identified in the second sentence of the provision. Plaintiffs further argue that even if *N.J.S.A. 47:1A-5(b)* were read to allow copying fees to be charged above actual costs, the common law of public access, as construed in *Moore, supra*, and subsequent case law, requires the imposition of an actual-costs price ceiling, because OPRA specifically preserves common law rights of access. See *N.J.S.A. 47:1A-8*.

Defendants, by contrast, emphasize different portions of *N.J.S.A. 47:1A-5(b)*. Although their specific contentions vary somewhat, defendants' central argument is that the price schedule in the second sentence of *N.J.S.A. 47:1A-5(b)* represents a “default rate” for photocopying, which a government agency in New Jersey can lawfully charge without reference to the “actual costs” of such copying. Defendants maintain that if, as plaintiffs argue, \*561 “actual costs” always control, then there would have been no reason for the Legislature to have included a fee schedule in the second sentence of Section 1A-5(b). Defendants urge that we not read the fee schedule in the second sentence out of the statute.

Defendants also disagree with plaintiffs that the common law requires copying charges to be fixed or capped at actual costs. They further emphasize the substantial burdens of a County calculating actual copying costs on a continuous basis, as well as the needs for uniformity and administrative predictability. Lastly, they urge that any relief awarded to plaintiffs be prospective and not retroactive, given the adverse fiscal consequences that otherwise would be borne by taxpayers.

C.

[6] In evaluating these competing arguments over how to construe Section 1A-5(b), we must bear in mind the public policies underlying the OPRA statute as a whole. The purpose of OPRA is “to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” *Mason v. City of Hoboken*, 196 N.J. 51, 64, 951 A.2d 1017 (2008) (quoting *Asbury Park Press v. Ocean County Prosecutor's Office*, 374 N.J.Super. 312, 329, 864 A.2d 446 (Law Div.2004)). Toward that end, the Legislature declared in OPRA, as “the public policy of this State,” that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, \*\*129 for the protection of the public interest ... [.]” *N.J.S.A. 47:1A-1* (emphasis added). “[A]ny limitations on the right of access accorded by [the former RKL][,] as amended and supplemented, shall be construed in favor of the public's right of access.” *Ibid*. These broad legislative findings in favor of “readily accessible” government records have been repeatedly recognized and applied in case law under OPRA. See, e.g., *Burnett v. County of Bergen*, 198 N.J. 408, 421-22, 968 A.2d 1151 (2009); *Mason, supra*, 196 N.J. at 64-65, 951 A.2d 1017; \*562 *Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535, 874 A.2d 1064 (2005); *MAG Entm't LLC v. Div. of Alcoholic Beverage Control*, 375 N.J.Super. 534, 544, 868 A.2d 1067 (App.Div.2005).

These public policies in OPRA favoring reasonable citizen access to government records have long been part of our State's history and tradition. For example, in *Moore, supra*, 39 N.J. at 30, 186 A.2d 676, the Supreme Court acknowledged the “vital importance” of a citizen's right to inspect certain records maintained by the government. Thereafter, in *Higg-A-Rella, Inc. v. County of Essex*, 141 N.J. 35, 41, 660 A.2d 1163 (1995), another pre-OPRA case, the plaintiffs sought copies of computer tapes, as opposed to hard copies, of municipal tax assess-

ment records. The Court held that under both the then-applicable RKL and the common law, copying fees should not be used to discourage public access to records. *Id.* at 53, 660 A.2d 1163.

We therefore parse the four sentences of *N.J.S.A. 47:1A-5(b)* cognizant of these strong legislative policies and traditions.

#### D.

The first sentence of Section 1A-5(b) instructs that “[a] copy ... of a government record may be purchased by any person upon payment of *the fee prescribed by law or regulation ...*” *N.J.S.A. 47:1A-5(b)* (emphasis added). The first sentence further instructs that “if a fee is not prescribed by law or regulation, [then the copy may be purchased] upon payment of *the actual cost of duplicating the record.*” *Ibid.* (emphasis added).

Skipping ahead for a moment, the third sentence of Section 1A-5(b) defines the “actual cost” of duplicating a record, which “shall be the cost of materials and supplies used to make a copy of the record ...” *Ibid.* Actual cost “shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in [ *N.J.S.A. 47:1A-5(c)*],” a separate provision which authorizes a “special service charge” when the duplication\*563 of a record involves “an extraordinary expenditure of time and effort.” *Ibid.*<sup>FN8</sup>

**FN8.** None of the records requested by the instant three plaintiffs are claimed to be unusually large or odd-shaped documents that required extraordinary efforts to duplicate. Therefore, the “special service charges” of Section 1A-5(c) are not applicable here.

Meanwhile, the second sentence of Section 1A-5(b) advises that “[e]xcept as otherwise provided by law or regulation, the fee assessed for the duplication of a government record embodied in the form of a printed matter shall not exceed [certain specified rates].” *Ibid.* Those specified

rates are \$0.75 per page for “the first page to tenth page”; \$0.50 per page for the “eleventh page to twentieth page,” and \$0.25 per page for “all pages over twenty [.]” *Ibid.* We note that these rates in OPRA track the charges previously authorized under the former RKL, only increased by between \$0.15 and \$0.25. The second sentence of Section 1A-5(b) makes no reference to the “actual cost” verbiage in the first sentence. Also, the term \*\*130 “printed matter” is not defined in the second sentence.

This statutory arrangement is further complicated by the fourth sentence of Section 1A-5(b), which specifies that “[i]f a public agency can demonstrate that its actual costs for duplication of a government record *exceed the foregoing rates*, the public agency shall be permitted to charge the *actual cost* of duplicating the record.” *Ibid.* (emphasis added). The fourth sentence does not explain how its language addressing such higher “actual cost” scenarios correlates with the “actual cost” language in the first sentence.

[7] To be sure, Section 1A-5(b) is not a model of clarity in draftsmanship. The four sentences of the provision, particularly if read out of the context of its legislative origins and State traditions, are seemingly circular and contradictory.<sup>FN9</sup> The first and \*564 fourth sentences appear to mandate an “actual cost” method for copying charges, at least where no different charge is prescribed by other statute or regulation. But the second sentence injects a detailed fee schedule that arguably is either superfluous to, or in conflict with, the statute’s actual cost mandate. Despite these difficulties of expression, we endeavor to “effectuate the legislative intent in light of the language used and the objects sought to be achieved.” *State v. Maguire*, 84 N.J. 508, 514, 423 A.2d 294 (1980).

**FN9.** Divining the meaning of the provision is akin to making sense of the paradoxical statement, “This sentence is false.”

#### E.

[8][9] As a starting point for our analysis, we dispel any notion that the copying charges imposed by the three Counties constitute fees that are otherwise “prescribed by,” <sup>FN10</sup> or “provided by,” <sup>FN11</sup> a particular “law or regulation.” Although the government records obtained and copied by plaintiffs were deeds or other real estate documents, records that must be maintained by the county clerk, the copying charges set forth in *N.J.S.A. 22A:2-29* for duplicating such records do not apply to self-serve copies. See *Dugan v. Camden County Clerk's Office*, 376 N.J.Super. 271, 277-78, 870 A.2d 624 (App.Div.), cert. denied, 184 N.J. 209, 876 A.2d 283 (2005) (holding that the charges for such self-serve copies are governed by Section 1A-5(b) of OPRA and not by the fee schedule enumerated in *N.J.S.A. 22A:2-29*).

FN10. See *N.J.S.A. 47:1A-5(b)* (first sentence).

FN11. See *N.J.S.A. 47:1A-5(b)* (second sentence).

[10] We do not consider the second sentence of Section 1A-5(b) as comprising, in and of itself, a “law or regulation” that “otherwise” controls the applicable copying rate. When the Legislature used the word “otherwise” in the second sentence of Section 1A-5(b), it manifestly intended to refer to codified enactments outside of that very same portion of OPRA. This conclusion is corroborated by the Sponsors Statement to S-2003, which notes \*565 that, apart from the per-page fee schedule identified in the bill, “[d]ifferent fees for the purchase of a copy of a record may be established by another statute or by regulation.” *S.B. 2003, supra*, (Sponsors Statement) (emphasis added). If the Legislature had intended the rates in the second sentence of Section 1A-5(b) to be treated as such, it could have said so much more clearly and directly. Moreover, such a construction would nullify the first sentence of the statutory provision, which instructs that “actual costs” control in the absence of a supervening “law or regulation.”

\*\*131 [11][12] In addition, we do not consider copying fee schedules that may be formally adopted by municipal or county governments to qualify as the other “law or regulation” referred to in the first and second sentences of Section 1A-5(b). Instead, we construe Section 1A-5(b)'s “law or regulation” reference to connote a statute, regulation, constitutional provision, or other legal mandate emanating from the *federal* or *state* government, not from a county or local agency or a records custodian.

Our interpretation on this point is bolstered by the fact that an earlier version of the bill that ultimately became the RKL in 1963 authorized “a reasonable fee ... to be fixed by regulation of the board, body, agency, department, commission, authority or officer having such records,” implying that the enactment could be made by a records or a sub-State governmental unit. *Assem. B. 344, supra*. That language did not survive the final codification of the RKL in 1963, and it did not reappear within the terms of OPRA when the latter was enacted in 2000. There also is no case law or other authority supporting the notion that the Legislature freely delegated to the county and local governments the power to trump the copying-charge requirements of Section 1A-5(b).

We are aware of no federal or state “law or regulation,” at least in codified form, <sup>FN12</sup> that overrides the copying charge provisions applicable here under Section 1A-5(b). We are left, therefore, \*566 with a need to resolve the tension between the “actual cost” language of the first, third and fourth sentences of Section 1A-5(a) and the sliding-scale fee schedule contained within the provision's second sentence.

FN12. We discuss plaintiffs' common-law claims, *infra*.

Defendants argue that this tension within the statute was already resolved in *Dugan*, because we described the \$0.25 per-copy charge within the second sentence of *N.J.S.A. 47:1A-5(b)* as “the default rate under OPRA” for copies over twenty

pages. *Dugan, supra*, 376 N.J.Super. at 278, 870 A.2d 624. However, the “default rate” reference in *Dugan* is only dicta. Because the defendants in *Dugan* had charged the plaintiff copying fees exceeding the \$0.25 per-page rate, we did not have the occasion to consider whether or not the fees needed to be calibrated to the county's actual costs. More importantly, we did not need to decide in *Dugan* how Section 1A-5(b) would apply if the county's “actual costs” were less than \$0.25 per page. Our focus in *Dugan* was on the interplay between N.J.S.A. 22A:2-29 and OPRA, not upon how to construe the language within OPRA and how to parse the four sentences within N.J.S.A. 47:1A-5(b). That OPRA-specific task of statutory construction was left, in effect, to be resolved in future litigation such as the present appeals. In sum, we are not bound by the passing reference to “default rate” within *Dugan*, and defendants have given that reference undue significance.

If, as defendants argue, the fee schedule in the second sentence of Section 1A-5(b) was meant to operate as a pre-emptive “default,” then the provision's reference to “actual cost” in the first sentence would become essentially meaningless. That is so because the default rate would always control in the absence of a fee prescribed by a separate statute or regulation.

[13][14] Our task is to attempt to give meaning to all of the words of a statute, even if the Legislature could have expressed its aim more clearly. Statutory interpretations leading to “absurd or unreasonable results are to be avoided.” *Davis v. Heil*, 132 N.J.Super. 283, 293, 333 A.2d 537 (App.Div.), *aff'd*, \*\*132\*56768 N.J. 423, 346 A.2d 405 (1975). Moreover, when a statute is ambiguous, the court “must construe the statute in a way that will best effectuate the Legislature's intent.” *State v. Szemple*, 135 N.J. 406, 422, 640 A.2d 817 (1994).

We have also considered whether the second sentence of Section 1A-5(b) can be reconciled with the other three sentences of that paragraph because the second sentence singularly refers to the copying

of a government record “embodied in the form of printed matter.” *Ibid*. The other sentences do not refer to “printed matter.” This difference, however, does not prove to be meaningful in resolving the issues before us.

Some government records, such as maps and photographs, are not in printed form. *See N.J.S.A. 47:1A-1.1* (broadly defining a “government record” under OPRA to include drawings, maps, photographs and other non-printed materials). The fee schedule in the second sentence appropriately recognizes that such non-printed materials may be harder or more time-consuming to copy. But the government records requested by plaintiffs in the instant cases are, in fact, printed materials. That being so, we cannot avoid the troublesome need to harmonize the treatment of photocopied printed materials within Section 1A-5(b).

#### F.

[15] Defendants contend that an agency's actual costs cannot universally dictate the applicable copying charges because, if that were true, the fee schedule in N.J.S.A. 47:1A-5(b) would never apply. We appreciate this argument, and the need to imbue meaning to all of the words of the statutory provision. *Green v. Auerbach Chevrolet Corp.*, 127 N.J. 591, 598, 606 A.2d 1093 (1992) (“a court ‘should try to give effect to every word of the statute, and should not assume that the Legislature used meaningless language.’ ” (quoting *Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety*, 120 N.J. 18, 26-27, 575 A.2d 1348 (1990))).

In response to this concern, plaintiffs suggest that, as a means of harmonizing all four sentences within Section 1A-5(b), the provision as a whole should be construed as a burden-shifting \*568 mechanism. More particularly, they suggest that the word “demonstrate” appearing in Section 1A-5(b)'s fourth sentence signals that a county or other government agency may choose to charge document requestors copying fees that are above the rates stated in the second sentence, but only if the agency bears its burden of “demonstrating” that its actual repro-

duction costs are *higher* than those stated rates. Reciprocally, plaintiffs suggest that if the agency's actual costs are *at or below* the rates set forth in the second sentence, then the agency will be obligated to reduce its charges to that lower level, but only if a challenger “demonstrates” that those actual costs fall below the rate baselines. Such a burden-shifting interpretation would allow government agencies to enjoy some, albeit limited, freedom to adopt the fee schedule in the second sentence of *N.J.S.A. 47:1A-5* (b) as an expedient, leaving it up to a challenger to prove that the agency's actual costs are indeed lower.

Plaintiffs' burden-shifting concept is not directly explicated in the text of OPRA. However, the Legislature's choice of the word “demonstrate” in the fourth sentence of Section 1A-5(b) provides some support for reading the statute in this fashion. In this regard, we find it noteworthy that the Senate floor amendments to what would become OPRA, which were adopted on May 3, 2001, substituted the term “demonstrate” for “show” in the provision's fourth **\*\*133** sentence.<sup>FN13</sup> This nomenclature change—from a mere “showing” to a more emphatic “demonstration”—is consistent with plaintiffs' reading.

**FN13.** See *Assem. B. 1309*, 209th Leg. Sess. (2000) (Fifth Reprint).

The term “demonstrate” is primarily defined in *Webster's II New College Dictionary* (1995 ed.) as “[t]o prove or make evident by reasoning or adducing evidence.” *Id.* at 301. By contrast, “show” is primarily defined in that same dictionary as “[t]o make visible.” *Id.* at 1022.<sup>FN14</sup> Although we do not wish to exaggerate **\*569** the importance of this change in statutory phraseology, the substitution of the term “demonstrate” does comport with plaintiffs' overall argument.

**FN14.** However, the third usage in *Webster's* does list “demonstrate” as a synonym for “show.” *Ibid.*

Apart from the words of the statute itself and its legislative history, we note that several prior cases have alluded to the “actual costs” language of Section 1A-5(b). For example, in *Constantine v. Twp. of Bass River*, 406 N.J.Super. 305, 323, 967 A.2d 882 (App.Div.), *certif. denied*, 200 N.J. 208, 976 A.2d 384 (2009), we considered whether government records that must be reproduced and turned over to a defendant in criminal discovery must be copied at the OPRA rates. We held in *Constantine* that OPRA does not govern the criminal discovery process. *Id.* at 325, 967 A.2d 882. However, in the course of our discussion of OPRA, we did observe in *Constantine* that “absent a showing that ‘actual costs for duplication’ exceed the fee schedule [of Section 1A-5(b)'s second sentence], these fees are maximum limits to be utilized whenever the ‘fee is not prescribed by law or regulation.’ Otherwise, OPRA permits a government agency to charge only for the *actual* costs of duplication, and thus, applies the same fee limits associated with the common law right of public access.” *Id.* at 324, 967 A.2d 882. (emphasis added).

Similarly, we observed in *Libertarian Party of Cent. N.J. v. Murphy*, 384 N.J.Super. 136, 139, 894 A.2d 72 (App.Div.), *certif. granted and remanded on other grounds*, 188 N.J. 487, 909 A.2d 723 (2006), that “the guiding principle set by the statute [is] that a fee should reflect the *actual cost* of duplication.” (emphasis added). More recently, in *Goldsmith v. Camden County Surrogate's Office*, 408 N.J.Super. 376, 383, 975 A.2d 459 (App.Div.), *certif. denied*, 200 N.J. 502, 983 A.2d 1110 (2009), we addressed the timeliness of a plaintiff's challenge to a county's copying fee charges and did not resolve the merits of the challenge. However, we did note in *Goldsmith* that the plaintiff's complaint about the excessiveness of the County's copying charges, which allegedly exceeded its actual costs, “may have some merit.” *Id.* at 383, 975 A.2d 459. We also emphasized in *Goldsmith* the well-settled **\*570** principle that a fee for citizen access to government records “‘must be reasonable, and cannot be used as a tool to discourage access.’ ” *Ibid.* (

quoting *Higg-A-Rella, supra*, 141 N.J. at 53, 660 A.2d 1163).

In that same vein, the Supreme Court recently noted in another OPRA case, *Burnett, supra*, 198 N.J. at 408, 968 A.2d 1151:

OPRA provides that costs may be passed on to requestors. *The statute allows for recovery of actual duplication costs. N.J.S.A. 47:1A-5(b).* In addition, requestors may be assessed costs for preparation work involved in responding to a request. *See N.J.S.A. 47:1A-5(c)* (allowing reasonable special service charge when records cannot be reproduced\*\*134 using ordinary equipment or reproduction involves extraordinary expenditure of time and effort); *N.J.S.A. 47:1A-5(d)* (allowing reasonable special charge if “a substantial amount of manipulation” is required).

[ *Id.* at 438, 968 A.2d 1151 (emphasis added).]

Although the discrete issues before the Court in *Burnett* involved who should bear the costs of redacting Social Security numbers from government records when they are supplied to a commercial requestor, the *dictum* from Chief Justice Rabner's opinion we have quoted above is consistent with the interpretation of Section 1A-5(b) that we have adopted in this opinion.

An additional factor that favors plaintiffs' suggested interpretation is the common law itself. OPRA explicitly states that it was not intended to be in derogation of the common law. *See N.J.S.A. 47:1A-8.* When that common-law tradition was explained in *Moore* in 1962, the Supreme Court referred to both the government agency's “actual” and “reasonable” costs of duplicating government records. *Moore, supra*, 39 N.J. at 31, 186 A.2d 676. Although we need not and do not reach in the present appeals whether the common law prohibits a government agency from ever charging more than “actual costs” for duplicating records, our State's common-law tradition at least reinforces plaintiffs' interpretation of OPRA, a statute designed to ex-

tend, not emasculate, the common law.

For all these reasons, we therefore adopt plaintiffs' “burden-shifting” construction of *N.J.S.A. 47:1A-5(b)*, fully aware that the statute is murky and that its true intended meaning is not entirely free from doubt.

#### \*571 G.

Having adopted plaintiffs' substantive position, we are sensitive to defendants' legitimate concerns about administrative feasibility and fiscal impact. However, we believe those respective concerns can be appropriately managed.

[16] As to administrative feasibility, we do not believe the Legislature intended in OPRA to require a government agency to continually re-calculate its actual costs and establish a “new” copying rate every time a citizen makes copies of a government record. Such an obligation would be unwieldy and absurd. Instead, we interpret OPRA to require simply that the government agency re-calibrate its copying charge schedule with reasonable periodic frequency. We believe that it would be reasonably sufficient for the agency to perform such recalibrations on at least an annual basis.

By analogy, similar periodic adjustments are reflected in other State regulations. For instance, *N.J.A.C. 8:43G-15.3* requires that a patient be furnished a copy of his or her medical records at “actual cost” of copying, but in any case not to exceed one dollar per page. *N.J.A.C. 8:43G-15.2* provides that the fees be reviewed once every three years. Likewise, *N.J.A.C. 8:43A-13.5(c)* provides for periodic reevaluation of the reasonableness of the fee scale applicable to ambulatory medical facilities. Furthermore, *N.J.A.C. 11:24-10.4* provides for copies of medical records by an HMO at a price “not to exceed prevailing community rates for photocopying.” A periodic recalibration of copying fees under *N.J.S.A. 47:1A-5(b)* would appear to be similarly feasible.

[17][18] Moreover, actual per-page costs may

be reasonably approximated. A margin of error of a penny or two in the per-page rate will be tolerable. The costs **\*\*135** may be averaged for the copy equipment used in all county offices.

We are equally sensitive to fiscal impact considerations, especially in the present severe economic times that exist not only in **\*572** New Jersey, but in the nation as a whole. We are mindful that defendants and the *amici* counties have likely relied in good faith on our “default rate” reference in *Dugan*, and that such reliance has affected their budgetary plans. We also note that defendants' construction of the text of *N.J.S.A. 47:1A-5(b)* was not frivolous, even though we have ultimately found their position unpersuasive.

[19] Consequently, we shall make our decision prospective only, effective on July 1, 2010, the start of the next State fiscal year, unless the Legislature enacts a statutory amendment prescribing otherwise. *See, e.g., Salorio v. Glaser*, 93 N.J. 447, 464-65, 461 A.2d 1100, cert. denied, 464 U.S. 993, 104 S.Ct. 486, 78 L.Ed.2d 682 (1983) (giving only prospective application to an opinion constitutionally invalidating a tax imposed on New York commuters who worked in New Jersey, in light of the State's past reliance on revenues from the tax and the need to maintain public fiscal stability). Retroactive relief is denied.

[20][21][22] Following the effective date, the defendant Counties and other government agencies may not charge requestors more than the “actual costs” of photocopying government records. If charges imposed are equal to or less than those stated in the second sentence of Section 1A-5(b), a challenger would have the burden of demonstrating that the agency's actual costs were indeed lower. If the challenger fails to sustain that burden, the agency will prevail and may continue to charge its existing rates. On the other hand, if the agency's charges exceed the rates stated in the second sentence, then the burden will be placed on the agency to demonstrate that its actual costs are indeed higher than those enumerated rates and are therefore

justified.

[23][24][25] If the proofs are inconclusive or in equipoise, <sup>FN15</sup> then the outcome shall be in favor of the party who does not have the burden of persuasion. The conventional preponderance-of-the-evidence **\*573** standard for civil cases shall apply. *See Liberty Mut. Ins. Co. v. Land*, 186 N.J. 163, 169, 892 A.2d 1240 (2006) (noting that “[a]s a general rule, the preponderance of evidence standard applies in civil actions”). These burden-shifting principles shall be observed, whether a dispute over the propriety of copying rates is litigated in a court or is presented administratively to the Government Records Council. *See N.J.S.A. 47:1A-6* (noting the Council's concurrent jurisdiction to hear OPRA disputes); *see also Fisher v. Div. of Law*, 400 N.J.Super. 61, 70, 946 A.2d 53 (App.Div.2008).

FN15. Although we suspect that the calculation of actual costs often could be straightforward and determined with simple arithmetic, there may be instances in which there are disputed issues of accounting, amortization, and cost allocation or other subjective factors that could make it difficult to fix “actual costs” definitively. We envision that the burden-of-proof construct will make a difference in resolving such “grey area” cases.

#### IV.

In light of our disposition on the merits, and the prospective nature of our decision, we need not address the other issues raised on the appeal and the cross-appeal, including the timeliness of plaintiffs' lawsuits, the class certification issues, the quantum of damages or other retroactive relief, and the various other issues and sub-issues raised. We do not resolve plaintiffs' potential entitlement to counsel **\*\*136** fees under *N.J.S.A. 47:1A-6*, and defer to the trial courts any such fee-shifting claims, including counsel fees incurred on the appeals. *See R. 2:11-4*.

We have endeavored in this opinion to adhere to the most probable intent of the Legislature, even

though its wishes are rather cryptically expressed in the present statute. If the Legislature prefers a different approach, it surely can revise [N.J.S.A. 47:1A-5](#) in a manner that makes the applicable copying rates clearer and more definitive, as was attempted in the last legislative session.<sup>FN16</sup> Absent such legislative action, government entities shall be guided by the interpretation set forth in this opinion.

**FN16.** We express no opinion, of course, about the merits of any of the bills that were previously introduced on the subject, or whether those bills would be in derogation of the common law.

**\*574** The matters are deconsolidated and individually remanded to the Law Division for further proceedings consistent with this opinion.

N.J.Super.A.D.,2010.

Smith v. Hudson County Register

411 N.J.Super. 538, 988 A.2d 114

END OF DOCUMENT



New Jersey Judiciary  
**Superior Court - Appellate Division**  
**NOTICE OF APPEAL**

**RECEIVED**  
**APPELLATE DIVISION**

**MAR 23 2011**

**SUPERIOR COURT**  
**OF NEW JERSEY**

Type or clearly print all information. Attach additional sheets if necessary.		ATTORNEY / LAW FIRM / PRO SE LITIGANT				
TITLE IN FULL (AS CAPTIONED BELOW): James Gensch, on behalf of himself and all others similarly situated, Plaintiffs, vs. Hunterdon County Clerk's Office, and Mary H. Melfi, in her capacity as the Hunterdon County Clerk, and Hunterdon County through the Hunterdon County Board of Chosen Freeholders, Defendants.		NAME Gaetano M. De Sapio, Esq.				
		STREET ADDRESS 1110 Harrison Street, Suite H				
		CITY Frenchtown	STATE NJ	ZIP 08825	PHONE NUMBER 908-996-6240	
		EMAIL ADDRESS desapiolaw@earthlink.net				

ON APPEAL FROM		
TRIAL COURT JUDGE Hon. Yolanda Ciccone, A.J.S.C.	TRIAL COURT OR STATE AGENCY Hunterdon	TRIAL COURT OR AGENCY NUMBER HNT-L-307-07

Notice is hereby given that County of Hunterdon appeals to the Appellate Division from a  Judgment or  Order entered on February 7, 2011 in the  Civil  Criminal or  Family Part of the Superior Court or from a  State Agency decision entered on \_\_\_\_\_.

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.)  Yes  No

If not, has the order been properly certified as final pursuant to R. 4:42-2?  Yes  No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a  conviction  post judgment motion  post-conviction relief.  
 If post-conviction relief, is it the  1st  2nd  other \_\_\_\_\_  
specify

Is defendant incarcerated?  Yes  No

Was bail granted or the sentence or disposition stayed?  Yes  No

If in custody, name the place of confinement:

Defendant was represented below by:  
 Public Defender  self  private counsel \_\_\_\_\_  
specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge	Hon. Yolanda Ciccone, A.J.S.C.	March 23, 2011
Trial Court Division Manager		
Tax Court Administrator		
State Agency		
Attorney General or Attorney for other Governmental body pursuant to <u>R. 2:5-1(a), (e) or (h)</u>		
Other parties in this action:		

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
Plaintiff/Respondent James Gensch, et al.	Sander D. Friedman, Esq. 125 North Route 73, West Berlin, NJ 08091  856-988-7777	March 23, 2011

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office	Records Manager, Somerset County Courthouse	3/23/2011	\$250.00
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).  
List the date(s) of the trial or hearing:
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

3-23-2011

DATE



SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



New Jersey Judiciary  
 Superior Court - Appellate Division  
 CIVIL CASE INFORMATION STATEMENT

RECEIVED  
 APPELLATE DIVISION

MAR 23 2011

SUPERIOR COURT  
 OF NEW JERSEY

Please type or clearly print all information.

TITLE IN FULL  James Gensch, on behalf of himself and all others similarly situated, Plaintiffs/Respondent, vs. Hunterdon County Clerk's Office, and Mary H. Melfi, in her capacity as the Hunterdon County Clerk, and Hunterdon County through the Hunterdon Board of Chosen Freeholders, Defendants/Appellant	TRIAL COURT OR AGENCY DOCKET NUMBER  HNT-L-000307-07
---	--

■ Attach additional sheets as necessary for any information below.

APPELLANT'S ATTORNEY EMAIL ADDRESS: desapiolaw@earthlink.net

PLAINTIFF  DEFENDANT  OTHER (SPECIFY)

NAME Gaetano M. De Sapio, Esq.		CLIENT Hunterdon County Clerk's Office, et al.			
STREET ADDRESS 1110 Harrison Street, Suite H	CITY Frenchtown	STATE NJ	ZIP 08825	TELEPHONE NUMBER 908-996-6240	

RESPONDENT'S ATTORNEY \* EMAIL ADDRESS: sdf@friedmandoherty.com

NAME Sander D. Friedman, Esq.		CLIENT James Gensch, et al., Plaintiffs			
STREET ADDRESS 125 North Route 73	CITY West Berlin	STATE NJ	ZIP 08091	TELEPHONE NUMBER 856-988-7777	

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

February 7, 2011 Order awarding Attorney's Fees to the Plaintiff. The Court issued a Statement of Reasons on March 14, 2011. A copy of the Order and Statement are attached.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?  YES  NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6)  YES  NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice?  YES  NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h))  YES  NO

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

\*See Attached Statement

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only):

\*\*See Attached Statement

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? February 7, 2011  YES  NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? March 14, 2011  YES  NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)?  YES  NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal?  YES  NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal?  YES  NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY?  YES  NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Zeiger v. Hudson County Register, et al.; Smith v. Hudson (Q 1A&B)

Gensch v. Hunterdon County Clerk, et al. (Q 2)

Appellate Division Docket Number:

Docket No. A-4114-09T3; A-4113-09T3

Docket No. A-2507-08T3

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.  YES  NO

Explain your answer:

All prior efforts for mediation have failed.

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 Rule 1:38-7(b).

County of Hunterdon

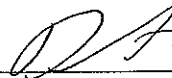
Name of Appellant or Respondent

3/23/2011

Date

Gaetano M. De Sapio, Esq.

Name of Counsel of Record  
(or your name if not represented by counsel)



Signature of Counsel of Record  
(or your signature if not represented by counsel)

## **\*BRIEF STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On May 8, 2007, plaintiff filed a class action suit against the Hunterdon County Clerk's Office, alleging the Hunterdon County Clerk's fee of 25 cents per page for self-service copies was excessive under OPRA (N.J.S.A. 47:1A-1, et seq.) and the Common Law Right of Access. The plaintiff and the class sought damages going back six years from the date of filing his complaint. On November 17, 2008, the plaintiff filed a motion for summary judgment arguing that the defendant can only charge "actual costs" per copy. The defendant filed a Cross-motion for Summary Judgment, arguing that 25 cents is the default rate under OPRA and is consistent with the Common Law Right of Access. On December 22, 2008, the trial court dismissed the plaintiff's complaint.

The plaintiff appealed. The Appellate Division consolidated the Gensch matter with two other identical suits filed by plaintiff's counsel in Hudson (Smith v. Hudson County Register) and Sussex (O'Shea v. Sussex County Clerk) Counties. Morris, Passaic, Mercer and Middlesex counties all joined the appeal as amici curiae. Oral argument was held on September 16, 2009 and the court issued its opinion on February 10, 2010. Smith v. Hudson County Register, 411 N.J. Super 538 (App. Div. 2010).

The Appellate Division held that effective July 1, 2010, the defendant Counties must reevaluate its actual costs and charge no more than actual costs for photocopying of government records. The prospective nature of the Appellate Court's decision defeated any claim by the plaintiff class for damages. The Appellate Court remanded the matter to the trial court for any potential claim of attorney's fees under N.J.S.A. 47:1A-6.

On September 20, 2010, the plaintiff filed a motion and petition for attorney's fees in the amount of \$166, 255.73 and an award for the lead plaintiff of \$12,000. The defendant opposed the motion on the basis that: (1) the plaintiff was not a "prevailing party" as defined in the fee-shifting statute under OPRA (N.J.S.A. 47:1A-6); (2) the plaintiff was not entitled to attorney's fees under the catalyst theory; (3) in evaluating what is reasonable under an OPRA award of counsel fees, the court should not only consider the actual time and energy invested by the attorney, the expertise and hourly rate, but should apply other equitable factors to determine whether or not the proposed award is "reasonable" given all the circumstances of the case; (4) the plaintiff should not be entitled to an award for attorney's fees or stipend since the litigation was planned prior to any event occurring and the plaintiff and his attorney artificially created the circumstances which served as the foundation for the suit; (5) the prospective nature of the Appellant Court's opinion barred any stipend by the lead plaintiff, and; (6) the plaintiff's application for attorney's fees was not timely filed.

On November 12, 2010, the trial court heard oral argument on the motion. On February 7, 2011, the trial court issued an order denying the lead plaintiff stipend and awarding attorney's fees to the plaintiff's counsel in the amount of \$93, 264.37. The trial court issues a Statement of Reasons on March 14, 2011.

The Defendant, County of Hunterdon, is appealing the award of attorney's fees to the plaintiff.

**\*\*PROPOSED ISSUES TO BE RAISED ON APPEAL**

- I. Plaintiff is not entitled to an award of attorney's fees under the OPRA fee-shifting statute, N.J.S.A. 47:1A-6.
- II. Plaintiff is not entitled to an award of attorney's fees under the Catalyst Theory.
- III. In evaluating what is reasonable under an OPRA award of counsel fees, a court should not only consider the actual time and energy invested by the attorney, the expertise and hourly rate, but should apply other equitable factors to determine whether or not the proposed award is "reasonable" given all the circumstances of the case.
- IV. The Plaintiff is not entitled to an award of attorney's fees since the plaintiff and his attorney planned and personally and artificially created the circumstances which served as the foundation of the suit.
- V. The Plaintiff is not entitled to an award of attorney's fees since his application was not timely made.

## HUNTERDON COUNTY LEGAL ACTIONS REPORT

update: September 01, 2010

The Hunterdon County Board of Chosen Freeholders adopted a resolution on April 6, 2010 recognizing the need for open and transparent government. The Board of Chosen Freeholders resolved to make available on our website a brief synopsis status report of all legal actions to which the County of Hunterdon is a party. The information is limited to that in the public domain or public filings. Any additional information can be obtained utilizing the docket number through the court system.

Litigation Title	Filing Date	Docket #	Brief Description	Status of Litigation & Amount billed from County Counsel's Office to date
NJ Sand Hill Band of Lenape and Cherokee Indians	3/12/06	US District Court Case No. 99-cv-00683	Fraud with regard to right to land, water, hunting, fishing and aboriginal rights	Pending \$2,796.26
Den Hollander v. Hunterdon County et. al.	4/3/08	Hunterdon County Superior Court Docket No. HNT-L-190-09	Defamation	Pending \$3,783.40
Errickson vs. County of Hunterdon	7/23/08	Essex County Superior Court Docket No. ESX-L-5046-08	Wrongful termination	Pending \$13,449.16
Farneski vs. County of Hunterdon	10/20/09	US District Court Case No. 3:2009-cv-04769	Hostile work environment	Pending \$6,126.82
Kolvalchik vs. G. Wagner, County of Hunterdon, et.al.	2/4/08	US District Court Case No. 3:08-cv-00507	Assault at County Jail	Pending
Mackay v. Kemper Sports and County of Hunterdon	11/23/09	Hunterdon County Superior Court Docket No. HNT-L-667-09	Wrongful termination	Pending \$5,559.41
Marsh v. County of Hunterdon, et. al.	7/26/07	Hunterdon County Superior Court Docket No. HNT-L-177-09	Breach of Contract	Voluntary dismissal by Plaintiff on 5/14/10 \$8,252.63
Nugent v. County of Hunterdon	5/24/10	Hunterdon County Superior Court Docket No. HNT-L-00313-10	Hostile work environment	Pending \$10,149.94
Yard v. County of Hunterdon	1/26/09	Hunterdon County Superior Court Docket No. HNT-L-247-09	Basement flooding as a result of redesign of roadway	Settled March 2010 \$1,629.75
Kobner v. County of Hunterdon, et. al.	2/6/08	Middlesex County Superior Court Docket No. MID-L-1632-08	New Jersey Constitutional claims regarding his failure to be reappointed by the Sheriff	Settled April 2010 \$31,384.80

<b>Litigation Title</b>	<b>Filing Date</b>	<b>Docket #</b>	<b>Brief Description</b>	<b>Status of Litigation &amp; Amount billed from County Counsel's Office to date</b>
Bailey v. Hunterdon County Agricultural Development Board	4/23/09	Office of Administrative Law OAL Docket No. ADC-12167-2009S	Appeal of County Agricultural Development Board Resolution	Pending \$13,813.35
Gensch v. County of Hunterdon, et.al.	5/8/07	Hunterdon County Superior Court Docket No. HNT-L-307-07 (Appellate Division Docket No. A-2507-08T3)	Challenge to public copier fees	Pending \$65,769.82
Franklin Township v. Hunterdon County Agricultural Development Board	12/18/09	Office of Administrative Law OAL Docket No. ADC-02026-2010S	Appeal of County Agricultural Development Board Resolution	Pending \$16,840.69
Garden State Growers v. Hunterdon County Agriculture Development Board	3/9/09	Office of Administrative Law OAL Docket No. ADC-02420-2009S	Appeal of County Agricultural Development Board Resolution	Pending \$53,957.38
Bailey v. Hunterdon County Agricultural Development Board, et.al.	11/25/09	Office of Administrative Law OAL Docket No. ADC-12167-2009S	Appeal from an Administrative Dismissal of a Right to Farm Complaint by the CADB	Pending \$5,378.50
State Agriculture Development Committee, Hunterdon County v. Quaker Valley Farms	3/20/08	Hunterdon County Superior Court Docket No. HNT-C-14007-08	Action to enforce deed of easement	Pending \$82,977.48
Foy v. Round Valley Recreation Area, et al.	4/4/08	Hunterdon County Superior Court Docket No. HNT-L-202-10	Ankle fracture playing volleyball at Round Valley Recreation Area	Pending \$1,622.40
Hernandez, Alexander v. Mountainview Youth Corrections	January 2010	L-4142-10	Slip and fall; broken leg	

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October 14, 2010

Hunterdon County Board of Chosen Freeholders  
Margaret Pasqua, Treasurer  
PO Box 2900  
Flemington NJ 08822

In Reference To: ads James Gensch, et als, file #5929  
(Class Action lawsuit re: overcharge)

Professional Services Rendered through 10/7/10

		<u>Hrs/Rate</u>	<u>Amount</u>
9/23/2010	MDS review motion for attorney fees filed by plaintiff; related legal research	1.87 150.00/hr	280.50
	MS work on faxing motion for stipend award and attorney fees; work on file	0.68 75.00/hr	51.00
9/24/2010	MS drafting letter to Hudson County Counsel enclosing copy of Motion for Stipend and attorney fees; transmitting correspondence and update file	0.33 75.00/hr	24.75
9/27/2010	MDS review fee applications from Hudson and Mercer Counties	0.77 150.00/hr	115.50
9/28/2010	MDS review fee application and review case law cited	2.15 150.00/hr	322.50
9/29/2010	MDS review fee application and draft response papers	2.28 150.00/hr	342.00
9/30/2010	MDS drafting reply brief and related legal research	3.85 150.00/hr	577.50

	<u>Hrs/Rate</u>	<u>Amount</u>
10/4/2010 MS preparing memo to Freeholders re: answer to attorney fees; updating file	0.45 75.00/hr	33.75
MDS work on brief and related legal research; telephone conferences with other County Counsels	1.85 150.00/hr	277.50
GMD review motion	0.30 175.00/hr	52.50
10/5/2010 ADS review plaintiff's motion; review email	0.40 75.00/hr	30.00
10/6/2010 MDS work on reply brief and related legal research; drafting certification; telephone conference with Middlesex County Counsel	4.80 150.00/hr	720.00
MS preparing brief and cover letter to Civil Manager for filing	3.13 75.00/hr	234.75
10/7/2010 LAH preparing brief	6.05 75.00/hr	453.75
MDS revising brief and certification and related legal research	6.38 150.00/hr	957.00
CMK revising certification of GMDS, cover letter to Clerk, and proposed order; work on exhibits; work on brief; transmitting correspondence	4.70 75.00/hr	352.50
GMD drafting brief	6.62 175.00/hr	1,158.50
For professional services rendered	<u>46.62</u>	<u>\$5,984.00</u>
Additional Charges :		
9/23/2010 fax		5.00
9/24/2010 cost of photocopying		54.25
postage		4.95
10/7/2010 cost of photocopying		25.00
postage		9.90
fax		5.00
cost of photocopying		97.00
Total additional charges		<u>\$201.10</u>
Total amount of this bill		<u>\$6,185.10</u>

CLAIMANT'S CERTIFICATION AND DECLARATION  
 I DO SOLEMNLY DECLARE AND CERTIFY UNDER THE PENALTIES OF THE LAW THAT THE WITHIN BILL IS CORRECT IN ALL ITS PARTICULARS; THAT THE ARTICLES HAVE BEEN FURNISHED OR SERVICES RENDERED AS STATED THEREIN; THAT NO BONUS HAS BEEN GIVEN OR RECEIVED BY ANY PERSON OR PERSONS WITHIN THE KNOWLEDGE OF THIS CLAIMANT IN CONNECTION WITH THE ABOVE CLAIM; THAT THE AMOUNT THEREIN STATED IS JUSTLY DUE AND OWING; AND THAT THE AMOUNT CHARGED IS A REASONABLE ONE.



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November 11, 2010

Hunterdon County Board of Chosen Freeholders

Margaret Pasqua, Treasurer  
PO Box 2900  
Flemington NJ 08822

In Reference To: ads James Gensch, et als, file #5929  
(Class Action lawsuit re: overcharge)

Professional Services Rendered through 11/01/10

		<u>Hrs/Rate</u>	<u>Amount</u>
10/8/2010	MDS work in connection with service of response papers; telephone conference with Middlesex County Counsel	0.68 150.00/hr	102.00
	RG work on file	0.12 75.00/hr	9.00
10/12/2010	MS updating file	0.25 75.00/hr	18.75
10/13/2010	ADS work in connection with oral argument	0.08 75.00/hr	6.00
10/14/2010	MS work on file	0.23 75.00/hr	17.25
	ADS review issues regarding oral argument	0.05 75.00/hr	3.75
10/15/2010	MDS review correspondence	0.10 150.00/hr	15.00

	<u>Hrs/Rate</u>	<u>Amount</u>
10/20/2010 ADS review letter from Attorney Friedman	0.07 75.00/hr	5.25
MS work on reply to opposition	0.23 75.00/hr	17.25
10/21/2010 MDS review plaintiff's reply papers	0.88 150.00/hr	132.00
10/28/2010 MDS telephone conference with Civil Division; drafting confirming letter re: adjournment	0.50 150.00/hr	75.00
MS telephone conferences with court and Attorney Friedman's office re: court hearing adjourned from 10/29 to 11/12; letter to County Clerk re: 10/29 hearing adjournment	1.08 75.00/hr	81.00
11/1/2010 MDS review plaintiff's reply papers	0.48 150.00/hr	72.00
For professional services rendered	<hr/> 4.77	<hr/> \$554.25
Additional Charges :		
10/8/2010 cost of photocopying		25.75
10/19/2010 cost of photocopying		0.25
10/20/2010 cost of photocopying		10.00
10/28/2010 cost of photocopying		0.75
Total additional charges		<hr/> \$36.75
Total amount of this bill		<hr/> <hr/> \$591.00

**CLAIMANT'S CERTIFICATION AND DECLARATION**

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January 03, 2011

Hunterdon County Board of Chosen Freeholders  
Margaret Pasqua, Treasurer  
PO Box 2900  
Flemington NJ 08822

In Reference To: ads James Gensch, et als, file #5929  
(Class Action lawsuit re: overcharge)

Professional Services Rendered through 11/12/10

		<u>Hrs/Rate</u>	<u>Amount</u>
11/8/2010	ADS work in connection with scheduling for motion hearing	0.10 75.00/hr	7.50
11/9/2010	MDS telephone conference with and email to Middlesex, Mercer, and Sussex County Counsels re: status of copier cases	0.62 150.00/hr	93.00
11/10/2010	ADS work in connection with scheduling issues for oral argument	0.05 75.00/hr	3.75
	MS work on schedule for oral argument on Friday, 11/12 with Judge Ciconne	0.12 75.00/hr	9.00
11/11/2010	LAH preparing agreement summary	0.50 75.00/hr	37.50
	MDS legal research re: mediation rules, fee shifting statutes and court rules; preparing for oral argument	2.12 150.00/hr	318.00
	GMD preparing for hearing	0.75 175.00/hr	131.25

	<u>Hrs/Rate</u>	<u>Amount</u>
11/12/2010 MDS preparation for and attendance at oral argument	2.58 150.00/hr	NO CHARGE
GMD preparation for and attendance at oral argument	2.58 175.00/hr	451.50
For professional services rendered	9.42	\$1,051.50
Additional Charges :		
11/11/2010 cost of photocopying		1.25
Total additional charges		\$1.25
Total amount of this bill		\$1,052.75

CLAIMANT'S CERTIFICATION  
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March 17, 2011

Hunterdon County Board of Chosen Freeholders

Margaret Pasqua, Treasurer  
PO Box 2900  
Flemington NJ 08822

In Reference To: ads James Gensch, et als, file #5929  
(Class Action lawsuit re: overcharge)

Professional Services Rendered through 3/2/2011

		<u>Hrs/Rate</u>	<u>Amount</u>
1/13/2011	GK review letter from Benjamin Liebowitz	0.10 25.00/hr	2.50
2/10/2011	GK review correspondence from Friedman and Doherty	0.10 25.00/hr	2.50
2/11/2011	ADS review Judge Ciccone's order awarding counsel fees	0.05 75.00/hr	3.75
	RG drafting letter to Attorney Friedman; transmitting correspondence	0.17 75.00/hr	12.75
	GMD review order and evaluate next step	0.43 175.00/hr	75.25
2/16/2011	MDS drafting motion for stay of order and letter brief	2.15 150.00/hr	322.50
2/17/2011	MDS telephone conferences with Middlesex and Sussex County Counsels' drafting motion for stay of order	0.92 150.00/hr	138.00

	<u>Hrs/Rate</u>	<u>Amount</u>
2/17/2011 ADS work in connection with inquiry from County Clerk	0.10 75.00/hr	7.50
2/18/2011 ADS work in connection with status of litigation in other New Jersey counties	0.07 75.00/hr	5.25
2/22/2011 MDS work on motion for stay; drafting notice of appeal; telephone conference with Middlesex County Counsel	2.18 150.00/hr	327.00
MS work on notice of motion to stay of order, letter brief and certification of Gaetano M. De Sapio; drafting cover letter to Central Fee	2.08 75.00/hr	156.00
GMD work on affidavit	0.17 175.00/hr	29.75
2/23/2011 MS telephone conference with Lisa Baker; revising letter to Civil Division enclosing documents to be filed; revising letter brief	1.77 75.00/hr	132.75
2/28/2011 GK review correspondence from Friedman and Doherty	0.10 25.00/hr	2.50
3/2/2011 GK review correspondence from Friedman & Doherty	0.10 25.00/hr	2.50
For professional services rendered	<hr/> 10.48	<hr/> \$1,220.50
Additional Charges :		
1/13/2011 cost of photocopying		10.75
2/11/2011 postage		0.44
fax		5.00
cost of photocopying		0.50
2/23/2011 postage		3.05
cost of photocopying		17.50
3/2/2011 cost of photocopying		0.25
Total additional charges		<hr/> \$37.49
Total amount of this bill		<hr/> <hr/> \$1,257.99

CLAIMANT'S CERTIFICATION  
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April 21, 2011

Hunterdon County Board of Chosen Freeholders  
Margaret Pasqua, Treasurer  
PO Box 2900  
Flemington NJ 08822

In Reference To: ads James Gensch, et als, file #5929  
(Class Action lawsuit re: overcharge)

Professional Services Rendered through 3/30/2011

		<u>Hrs/Rate</u>	<u>Amount</u>
3/18/2011	MDS drafting notice of appeal, case information statement and statement of facts; review letter from Judge Ciccone	2.53 150.00/hr	379.50
3/21/2011	MS telephone conference with Patty Brill, Supervisor, Somerset County Court; work on appeal forms	1.60 75.00/hr	120.00
	MDS work on appeal documents	1.07 150.00/hr	160.50
3/22/2011	MS work on Notice of Appeal and letter to Clerk	2.58 75.00/hr	193.50
	MDS work on Notice of Appeal, Case Information Statement and letter to Clerk; review correspondence from Friedman and Doherty	2.68 150.00/hr	402.00
3/23/2011	MDS telephone conference with Middlesex County Counsel; drafting response to plaintiff's motion	0.87 150.00/hr	130.50
	MS work on notice of appeal	0.70 75.00/hr	52.50

	<u>Hrs/Rate</u>	<u>Amount</u>
3/29/2011 MDS drafting response to plaintiff's reply on motion for stay	0.45 150.00/hr	67.50
3/30/2011 MS letters to Judge Ciccone in response to plaintiff's response to our motion for a stay returnable 1/1/2011	1.77 75.00/hr	132.75
MDS review response to motion from plaintiff	0.65 150.00/hr	97.50
For professional services rendered	<hr/> 14.90	<hr/> \$1,736.25
Additional Charges :		
3/16/2011 cost of photocopying		0.50
3/22/2011 cost of photocopying		31.50
3/23/2011 postage		3.78
3/29/2011 postage		1.66
cost of photocopying		9.00
Total additional charges		<hr/> \$46.44
Total amount of this bill		<hr/> <hr/> \$1,782.69

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