

MEMORANDUM

TO: James Leonard, Records Commissioner

FROM: Frank Breslin, Revenue Commissioner

DATE: May 26, 2022

RE: Report of the Revenue and Water Commissioners on the Public Hearing with respect to the Proposed Amendments to the Water Department's Regulations: Chapter 2 – Sections 206.1 and 206.7

On February 9, 2022, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, the Department of Revenue and Water Department jointly filed with the Department of Records proposed amendments to Chapter 2, Sections 206.1 and 206.7 of the Water Department's Regulations. In accordance with Section 8-407(b) of the Charter, a hearing was requested and, pursuant to Section 8-407(c) of the Charter, a hearing was held on March 28, 2022. Pursuant to Section 8-407(c) of the Charter, I am forwarding herewith the Report of the Revenue and Water Commissioners on the Public Hearing. A memorandum of approval from the Law Department is attached.

Thank you for your assistance in this matter.



Frank Breslin
Revenue Commissioner

cc: Brooke C. Darlington, Divisional Deputy City Solicitor



City of Philadelphia

**LAW DEPARTMENT
Tax & Revenue Unit
1401 JFK Boulevard
5th Floor
Philadelphia, PA 19102**

MEMORANDUM

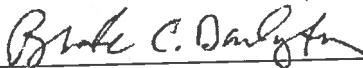
TO: Frank Breslin, Revenue Commissioner

FROM: Brooke C. Darlington, Divisional Deputy City Solicitor

DATE: May 25, 2022

RE: Report of the Revenue and Water Commissioners on the Public Hearing with respect to the Proposed Amendments to the Water Department's Regulations: Chapter 2 – Sections 206.1 and 206.7

I have reviewed the attached report dated May 17, 2022, on the public hearing held on March 28, 2022, with respect to the proposed regulations referenced above. I find the report to be legal and in proper form. In accordance with Section 8-407(c) of the Philadelphia Home Rule Charter, you may now forward the written report and the revised regulations to the Department of Records.



Brooke C. Darlington
Divisional Deputy City Solicitor

**REPORT OF THE REVENUE AND WATER COMMISSIONERS
ON THE PUBLIC HEARING WITH RESPECT TO
EARNED FORGIVENESS OF THE TIERED ASSISTANCE PROGRAM REGULATIONS
OF THE WATER AND REVENUE DEPARTMENTS**

May 17, 2022

On February 9, 2022, the Revenue and Water Departments (hereinafter referred to jointly as the Departments) filed with the Department of Records, pursuant to Section 8-407(a) of the Philadelphia Home Rule Charter, proposed amendments to the Departments' joint regulations regarding earned forgiveness of the Tiered Assistance Program (TAP).

Public notice of the filing of the proposed Regulations was published, and on March 4, 2022, one written request for a public hearing was made by Community Legal Services, Inc. (CLS) on March 4. A virtual public hearing was scheduled and held on Monday, March 28, 2022 at 1:00 p.m. via Zoom. Robert Ballenger of CLS spoke at the hearing. Mr. Ballenger also provided written comments in advance of the hearing date.

Through this Commissioners' Report (Report), amendments to Sections 201 (Definitions) and 206.7 (Earned Forgiveness) of the regulations are adopted, with modifications to Section 206.7(e) based on further consideration of the oral and written comments. This Report will be filed with the Department of Records. The regulations as revised by the Report are attached as Exhibit A and shall become effective on July 1, 2022. A version showing all changes made to the current regulations by the amendments as modified by this Report is attached as Exhibit B. The written testimony received on the proposed regulations is attached as Exhibit C. A summary of the written comments and testimony and the responses of the Commissioners are provided below.

The testifying witness at the public hearing supports amending the regulations to implement a monthly forgiveness model to replace the current forgiveness structure that only allows for full forgiveness after the customer has made 24 full TAP Bill payments. Mr. Ballenger had several additional comments and recommendations.

Mr. Ballenger stated that the first comment raised by CLS in its written testimony was their belief that a good policy basis has not been presented by the City for the regulations' different treatment relating to the forgiveness of principal arrears and penalty arrears. He raises this concern as an equity issue based on the different ways TAP customers accrue debt, as some customers receive balance transfers from previous owners or landlords that is treated entirely as principal, whereas other customers has long-standing debt with accrued penalty amounts. Mr. Ballenger states that none of the PUC-regulated arrearage forgiveness programs make a distinction between the forgiveness of principal and penalty arrears.

The Commissioners disagree with the contention that implementation of monthly forgiveness for principal arrears, and not penalty arrears, creates an inequitable treatment of TAP customers. Although TAP customers may come into the program having accumulated debt in different ways, all customers have the same opportunity to have their various types of debt forgiven, with principal forgiven on a monthly basis and penalty accrued after twenty-four

payments. Equitable policy favors treating similarly situated customers in the same manner, not necessarily treating different types of debt in the same way.

Secondly, Mr. Ballenger comments on subsection (e) of 206.7 and asks that it be eliminated or revised. He states that he while understands that it mirrors PECO's tariff language, he contends that PECO's tariff also incorporates its universal service and energy conservation plan document, dated 2016-2018, which contains additional details on PECO's arrearage forgiveness process. Mr. Ballenger proposes that subsection (e) be revised to capture the intention of the regulation, to allow for customers to fall behind in their TAP payments, but still be eligible for monthly forgiveness once a full TAP Bill is paid.

The Commissioners agree that subsection (e) should be revised to further clarify that if a TAP customer misses a payment, their monthly forgiveness is on hold only until another full TAP Bill is paid, not until the customer catches up completely if they have fallen multiple payments behind. The proposed language of Section 206.7(e) has been modified accordingly.



Frank Breslin
Revenue Commissioner



Randy E. Hayman
Water Commissioner

206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

206.1 Definitions.

The following words and phrases when used in Sections 206.0 through 206.10 of these regulations have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

- (a) **Civil Action:** An *in personam* lawsuit filed to collect water and sewer rents. A Civil Action shall be deemed commenced when a Complaint is filed with the Court of appropriate jurisdiction.
- (b) **Customer:** A natural person who (i) is receiving or (ii) is in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such person's primary residence in Philadelphia. A person shall cease to qualify as a Customer under the second category if his or her application for service is ultimately denied.
- (c) **Federal Poverty Level or FPL:** The Federal Poverty Level, as determined annually by the United States Census Bureau.
- (d) **Hold:** A non-permanent suspension of Litigation.
- (e) **Income:** All regular and periodic income from whatever source derived, including but not limited to salaries, wages, income from self-employment, alimony, support money, cash, public assistance and relief, the net amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits), all benefits received under State employment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, net income from rentals, workmen's compensation, interest and dividends, and any regular and periodic monetary contributions from a non-household member. Income shall not include overtime; back pay; severance pay; bonuses; tuition reimbursements; loan disbursements; federal or state income tax refunds; lump sum payments of benefits such as loss of time insurance benefits, death benefits, life insurance benefits and other insurance proceeds; Supplemental Nutrition Access Program ("SNAP") benefits or any other form of surplus food or other relief in kind supplied by a governmental agency; or property tax rebate.
- (f) **Litigation:** A Sheriff's Sale or Civil Action as defined in this Section.
- (g) **Low-income:** Income equal to or less than one hundred fifty percent (150%) of FPL.
- (h) **Monthly Household Income:** The monthly income received by the Customer and all adults residing in the Customer's household.
- (i) **Rate Board:** The Philadelphia Water, Sewer and Stormwater Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Philadelphia Code.
- (j) **Sheriff's Sale:** An *in rem* lawsuit filed to collect water and sewer rents, pursuant to the Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, et seq. A Sheriff's Sale shall be deemed commenced when a Petition pursuant to 53 P.S. § 7283 is filed with the Court of appropriate jurisdiction.
- (k) **Special Hardship:** A hardship condition that may include, but is not limited to, the following:
(i) an increase in the Customer's number of dependents in the household; (ii) a seriously ill household member; or; (iii) circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required.

(l) Tiered Assistance Program (TAP): The Income-Based Water Rate Assistance Program described in these regulations and Section 19-1605 of the Philadelphia Code.

(m) Pre-TAP arrears: For owners and occupants, the sum of all unpaid service, usage, and stormwater charges at the property, calculated at the time of first enrollment in TAP; or, for tenants, the sum of all unpaid service, usage, and stormwater charges at the property accruing during the period the tenant has been responsible to pay for water service pursuant to the terms of their lease, calculated at the time of first enrollment in TAP.

(n) TAP Payment Agreement: A payment agreement provided to a Customer enrolled in TAP in accordance with these regulations and Section 19-1605 of the Philadelphia Code.

(o) TAP Bill: A bill issued by the Water Revenue Bureau to a Customer enrolled in TAP for service, usage and stormwater charges and any payments toward pre-TAP arrears.

(p) WRB: The Water Revenue Bureau, within the City of Philadelphia Department of Revenue.

* * *

206.7 Earned Forgiveness

If a Customer maintains enrollment in TAP, the Customer will obtain forgiveness of outstanding arrears under the following conditions:

(a) A Customer maintaining enrollment in TAP, who makes twenty-four (24) full monthly payments of the TAP Bill, will earn forgiveness of penalty charges on Pre-TAP arrears.

(b) Any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).

(c) As of July 1, 2022, all Customers maintaining enrollment in TAP will receive a one-time lump sum forgiveness of Pre-TAP arrears, in an amount calculated by multiplying the amount of the Customer's Pre-TAP arrears by 1/24 and then by the number of full monthly payments of TAP Bills issued on or after September 1, 2020.

(d) After July 1, 2022, a Customer maintaining enrollment in TAP will earn forgiveness upon making each full monthly payment of the TAP Bill, calculated by dividing the amount of the Customer's Pre-TAP arrears by twenty-four (24). The credit for the forgiven debt will be applied to the Customer's account on or after the date of each full payment of the Customer's TAP Bill during such period of enrollment.

(e) If the Customer fails to make a full TAP Bill payment, the Customer will not receive forgiveness for that month; however, the Customer will remain eligible for forgiveness of Pre-TAP arrears the next time that the Customer makes a full TAP Bill payment. The Customer may recover any missed months of forgiveness by paying full TAP Bill amounts for those missed months.

(f) In the event that a Customer is unable to maintain enrollment in TAP due to a change in household income between September 1, 2020 and July 1, 2022, that results in a determination that the Customer is no longer eligible for enrollment in TAP, forgiveness of Pre-TAP arrears will be applied to the Customer's account, in an amount calculated by multiplying the amount of the Customer's Pre-TAP arrears at the time of initial enrollment by 1/24 and then by the number of complete monthly payments of TAP Bills issued on or after September 1, 2020.

206.0 INCOME-BASED WATER RATE ASSISTANCE PROGRAM

206.1 Definitions.

The following words and phrases when used in Sections 206.0 through 206.10 of these regulations have the meanings given to them in this Section unless specifically provided otherwise or unless the text clearly indicates otherwise:

- (a) **Civil Action:** An *in personam* lawsuit filed to collect water and sewer rents. A Civil Action shall be deemed commenced when a Complaint is filed with the Court of appropriate jurisdiction.
- (b) **Customer:** A natural person who (i) is receiving or (ii) is in the process of requesting or simultaneously requests to receive or restore service from the Water Department at such person's primary residence in Philadelphia. A person shall cease to qualify as a Customer under the second category if his or her application for service is ultimately denied.
- (c) **Federal Poverty Level or FPL:** The Federal Poverty Level, as determined annually by the United States Census Bureau.
- (d) **Hold:** A non-permanent suspension of Litigation.
- (e) **Income:** All regular and periodic income from whatever source derived, including but not limited to salaries, wages, income from self-employment, alimony, support money, cash, public assistance and relief, the net amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Federal Social Security Act (except Medicare benefits), all benefits received under State employment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, net income from rentals, workmen's compensation, interest and dividends, and any regular and periodic monetary contributions from a non-household member. Income shall not include overtime; back pay; severance pay; bonuses; tuition reimbursements; loan disbursements; federal or state income tax refunds; lump sum payments of benefits such as loss of time insurance benefits, death benefits, life insurance benefits and other insurance proceeds; Supplemental Nutrition Access Program ("SNAP") benefits or any other form of surplus food or other relief in kind supplied by a governmental agency; or property tax rebate.
- (f) **Litigation:** A Sheriff's Sale or Civil Action as defined in this Section.
- (g) **Low-income:** Income equal to or less than one hundred fifty percent (150%) of FPL.
- (h) **Monthly Household Income:** The monthly Income received by the Customer and all adults residing in the Customer's household.
- (i) **Rate Board:** The Philadelphia Water, Sewer and Stormwater Rate Board, established pursuant to Section 5-801 of the Home Rule Charter and Section 13-101 of the Philadelphia Code.
- (j) **Sheriff's Sale:** An *in rem* lawsuit filed to collect water and sewer rents, pursuant to the Municipal Claim and Tax Lien Law, 53 P.S. §§ 7101, et seq. A Sheriff's Sale shall be deemed commenced when a Petition pursuant to 53 P.S. § 7283 is filed with the Court of appropriate jurisdiction.
- (k) **Special Hardship:** A hardship condition that may include, but is not limited to, the following:
- (i) an increase in the Customer's number of dependents in the household; (ii) a seriously ill household member; or; (iii) circumstances that threaten the household's access to the necessities of life if payment of a delinquent bill is required.

(l) Tiered Assistance Program (TAP): The Income-Based Water Rate Assistance Program described in these regulations and Section 19-1605 of the Philadelphia Code.

(m) Pre-TAP arrears: For owners and occupants, the sum of all unpaid service, usage, and stormwater charges at the property, calculated at the time of first enrollment in TAP; or, for tenants, the sum of all unpaid service, usage, and stormwater charges at the property accruing during the period the tenant has been responsible to pay for water service pursuant to the terms of their lease, calculated at the time of first enrollment in TAP.

(nn) TAP Payment Agreement: A payment agreement provided to a Customer enrolled in TAP in accordance with these regulations and Section 19-1605 of the Philadelphia Code.

(oo) TAP Bill: A bill issued by the Water Revenue Bureau to a Customer enrolled in TAP for service, usage and stormwater charges and any payments toward pre-TAP arrears.

(pe) WRB: The Water Revenue Bureau, within the City of Philadelphia Department of Revenue.

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206.7 Earned Forgiveness

If a Customer maintains ~~continuous~~ enrollment in TAP, the Customer will obtain forgiveness of outstanding arrears under the following conditions:

(a) A Customer maintaining enrollment in TAP, who makes twenty-four (24) ~~full~~ complete monthly payments of the TAP Bill, will earn forgiveness of penalty charges on ~~P~~pre-TAP arrears.

(b) After each year of continued enrollment in TAP, ~~A~~any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).

(c) As of July 1, 2022, all Customers maintaining enrollment in TAP will receive a one-time lump sum forgiveness of Pre-TAP arrears, in an amount calculated by multiplying the amount of the Customer's Pre-TAP arrears by 1/24 and then by the number of full monthly payments of TAP Bills issued on or after September 1, 2020.

(de) After July 1, 2022, ~~a~~A Customer maintaining ~~continuous~~ enrollment in TAP will earn forgiveness upon making each ~~full~~ who makes twenty-four (24) complete monthly payments of the TAP Bill, calculated by dividing the amount of the Customer's Pre-TAP arrears by twenty-four (24) ~~on or after~~ September 1, 2020, will earn forgiveness of ~~pre~~ TAP arrears. The credit for the ~~forgiven~~ debt ~~pre~~ TAP arrears will be applied to the Customer's account on or after the date of each ~~full~~ the twenty-fourth (24th) complete monthly payment of the Customer's TAP Bbill during such period of enrollment.

(e) If the Customer fails to make a full TAP Bill payment, the Customer will not receive forgiveness for that month; however, the Customer will remain eligible for forgiveness of Pre-TAP arrears the next time that the Customer makes a full TAP Bill payment. The Customer may recover any missed months of forgiveness by paying full TAP Bill amounts for those missed months.

(fd) In the event that a Customer is unable to maintaining enrollment in TAP for twenty-four (24) consecutive months due to a change in household income between September 1, 2020 and July 1, 2022, that results in a determination that the Customer is no longer eligible for enrollment in TAP, forgiveness of ~~P~~pre-TAP arrears will be earned on the last day of the enrollment period and applied to the

Customer's account, in an amount calculated on or after the last day of enrollment with the amount of forgiveness of pre-TAP arrears determined by multiplying the amount of the Customer's ~~P~~pre-TAP arrears at the time of initial enrollment by 1/24 and then by the number of complete monthly payments of TAP Bills issued on or after September 1, 2020.



Before the Commissioners of
The Philadelphia Water Department and
The Philadelphia Department of Revenue

In the Matter of the Proposed Amendments :
To Chapter 2 (Assistance Programs) :
Of the Philadelphia Water Department Regulations :

Comments of Community Legal Services, Inc. Energy Unit

March 28, 2022

Center City Office: 1424 Chestnut St. | Philadelphia, PA 19102-2505 | Telephone: 215-981-3700 clsphila.org
North Philadelphia Law Center: 1410 West Erie Ave. | Philadelphia, PA 19140-4136 | Telephone: 215-227-2400



These comments set forth the recommendations of Community Legal Services, Inc. Energy Unit (CLS) regarding the Amendments to Chapter 2 of the Philadelphia Water Department Regulations, dated February 8, 2022 (“Proposed Regulations”).

We appreciate that assigned counsel in the Law Department provided us an opportunity to review an earlier draft of these Proposed Regulations. On January 31, 2022, we provided our recommended edits to the Proposed Regulations. The Law Department responded and informed us that several of our recommendations were adopted in the Proposed Regulations.

On behalf of the low-income water customers CLS represents, we are grateful for the meaningful improvements in pre-TAP arrearage forgiveness that are included in the Proposed Regulations. We believe that the twenty-four month timeframe over which Tiered Assistance Program (TAP) customers can earn forgiveness set forth in these proposed regulations is appropriate, as we explained when these regulations were previously amended.

Our comments focus on two issues: (1) the differential treatment of principal and penalty arrearages, and (2) clarification of Section 206.7(e).

Differential Treatment of Principal and Penalties

Under the Proposed Regulations, the Water Revenue Bureau (WRB) would forgive pre-TAP principal (a customer’s accumulated fixed, volumetric and residential stormwater charges) incrementally over a 24-month period, but would continue to forgive pre-TAP penalties on a “cliff” basis (removing penalties entirely after payment of the 24th TAP bill). Based on our correspondence with the Law Department, we understand that WRB puts penalty forgiveness on a separate track in its billing system.

As a general matter, utility customer assistance programs, like TAP, PECO Energy Company’s Customer Assistance Program (CAP) and Philadelphia Gas Works’ Customer Responsibility Program (CRP), are alternatives to traditional collection methods.¹ Viewed in this light, we submit there is no basis to treat penalty charges differently in the context of TAP, as neither principal nor penalty charges remain associated with traditional collection methods. To the TAP participant, there is no distinction between debts comprised of principal and penalty amounts. Upon entering TAP, all of those debts are suspended from collections and forgiven over time.

Maintaining the distinction also treats some TAP participants differently from others. In the case of a balance transfer to a new customer, for example an occupant or tenant customer, the transferred balance is no longer distinguished in WRB’s system; all transferred balances are treated as principal water debt. Maintaining separate forgiveness tracks thus penalizes customers who accumulated unaffordable water bill balances in their own names, and preferences those customers to whom balances are transferred.

¹ See 52 Pa. Code §69.261.



Penalty charges are intended to compensate the utility for costs of collecting bills. But when those penalty charges accumulate, they can represent a significant amount and take on a punitive character that no longer resembles the cost of collections.² This is particularly the case when unaffordable bills are issued to low-income customers and become uncollectible; the penalty charges simply increase the overall indebtedness that cannot be collected. In our practice, we have repeatedly assisted clients having thousands of dollars in accumulated penalty charges.

Once in TAP, WRB no longer demands payment of principal or penalty arrearages. As the authorizing legislation makes clear, TAP participants need only pay their TAP bills to continue to receive service. We strongly support incremental forgiveness of pre-TAP principal, and we do not believe there is any significant policy basis for retaining “cliff” forgiveness of associated pre-TAP penalties. Although this may stem from a programming decision by WRB, for TAP participants it is a month-after-month reminder that a part of the arrearage forgiveness they need to eliminate their water debt is unavailable.

We respectfully request that you reconsider the two-track approach to arrearage forgiveness. It occurs to us that WRB could implement this in practice by simply transferring all applicable principal and penalty arrearages upon TAP enrollment (regardless of customer type).

Section 206.7(e) Should be Clarified

Proposed Regulation Section 206.7(e) states:

If the Customer develops any arrearage while enrolled in TAP by not paying the full monthly TAP Bill amount, then Pre-TAP arrearage forgiveness will not resume until the monthly TAP Bill amount is paid in full.

As written, this provision appears to suspend all pre-TAP arrearage forgiveness when a customer misses a TAP bill payment. Our reading of this language is that it prevents arrearage forgiveness until all outstanding TAP bills are satisfied. As a result, on January 31, 2022, we suggested removing this language, as it is inconsistent with one of the purposes of incremental arrearage forgiveness – incentivizing payment on a monthly basis.

However, based on our correspondence with the Law Department, we now understand that the intention of this language is to suspend arrearage forgiveness for the specific missed monthly TAP bill, and that payment of the next TAP bill would continue to result in incremental arrearage forgiveness (as would payment of the missed bill). Additionally, we understand that this language was modeled on PECO’s Tariff.

² Recent literature has criticized utilities for imposing penalty charges that do not accurately reflect the utility’s actual collection expense. See, e.g., <https://apnews.com/article/energy-late-fees-Louisiana-Kentucky-da59030e9abc8b5271b4a13eee15f63d>



While we continue to think this section is unnecessary, if retained it should be modified to align more closely with its intent and with the language governing PECO's arrearage forgiveness program.

Primarily, we note that PECO's Tariff language is not a model of clarity. Instead, the language of PECO's Universal Service and Energy Conservation Plan (USECP), governing its CAP, is far more instructive. Please note that "PPA" is the acronym for pre-program arrearages, and synonymous with a TAP customer's combined pre-TAP principal and penalty charges. PECO's USECP provides:³

If a customer is eligible for PPA forgiveness (i.e. they have not received or benefited from PPA forgiveness in the past), the customer's total arrearage is set-aside and divided into 12 equal parts. Each month the CAP customer pays their new, affordable CAP bill in full and on time, one-twelfth of their PPA is forgiven.

PECO allows for customers who may have missed a PPA "forgiveness" due to late or missed payments to "catch-up" on missed forgivenesses. Whenever a customer brings their bill current during the initial 12-month period of PPA set-up, PECO will forgive any missed forgivenesses the customer did not receive during that time. If the customer brings their bill current after the 12-month period or beyond, PECO will forgive all missed forgivenesses.

With this language in mind, we suggest the following revised language for Proposed Regulation Section 206.7(e) if it is retained:

Each payment by a Customer of the monthly TAP Bill amount will result in Pre-TAP arrearage forgiveness. If the Customer misses a payment, the Customer will remain eligible for Pre-TAP arrearage forgiveness upon payment of future monthly TAP Bill amounts, and will be eligible to "catch-up" on missed Pre-TAP arrearage forgiveness by paying monthly TAP Bill amounts that were not previously paid.

* * *

³ This document is available at:

<https://www.peco.com/SiteCollectionDocuments/Revised%203%20year%20plan%20universal%20service%20and%20energy%20conservation%20plan.pdf>



We appreciate the Departments' consideration of these comments and our ongoing collaborative efforts to ensure that TAP delivers the meaningful benefits necessary to assist low-income Philadelphians' with ongoing and accumulated water bills.

Respectfully submitted,

Robert W. Ballenger, Esq.
Joline R. Price, Esq.
Kintéshia S. Scott, Esq.