



## OFFICE OF THE MERCER COUNTY PROSECUTOR

ANGELO J. ONOFRI  
*Prosecutor*

TRACEY McKEOWN  
*Chief of County Detectives*

209 S. Broad Street, 3<sup>rd</sup> Floor  
P.O. Box 8068  
Trenton, New Jersey 08650-0068  
Phone: (609) 989-6350  
mercercountyprosecutor.com

STEPHANIE A. KATZ  
*First Assistant Prosecutor*

MICHAEL J. NOVEMBRE  
*Deputy Chief of County Detectives*

September 10, 2019

Honorable Peter E. Warshaw, P.J.Cr.  
Mercer County Superior Court  
400 South Warren Street  
Trenton, New Jersey 08650

Re: State v. Kelly Yaede  
Complaint No. S-2019-001819-1103

Dear Judge Warshaw:

Please accept this letter in lieu of a formal response to the defendant's Notice of Motion for Interlocutory Appeal for a Motion to Dismiss on an Emergent Basis pursuant to Rule 3:24. Defendant filed a brief in support of the Motion to Dismiss the Complaint in Ewing Township Municipal Court on September 9, 2019. Defendant filed a subsequent Motion to Hear the Motion to Dismiss on an Emergent Basis on the same day, requesting that the matter be heard on the merits on Wednesday, September 11, 2019. The Honorable Roger T. Haley, P.J.M.C., denied the Motion to Hear the Dismissal Motion on an Emergent Basis.

Defendant has now filed a Notice of Motion for Interlocutory Appeal with the Superior Court, Law Division. Pursuant to Rule 3:24, defendant should have filed a Motion for Leave to Appeal to this court. Rule 3:24(a) states "(e)ither the prosecuting attorney or the defendant may seek *leave to appeal* to the Superior Court, Law Division from an interlocutory order entered before trial by a court of limited criminal jurisdiction" (emphasis added).

Further, R. 3:24(c) states that "(w)ith respect to interlocutory applications, the court may grant or deny leave to appeal on terms and may elect simultaneously to grant the motion and decide the appeal on the merits on the papers before it, or it may direct the filing of additional briefs or make such other order as it deems appropriate for the expeditious disposition of the matter." There is nothing in this Rule that allows for an emergent appeal, which defendant requests in paragraph 14 of the Certification of Counsel.

The defendant's sole basis for requesting that the motion to dismiss be heard on an emergent basis is that her ability to run for re-election will be hampered by these allegations. The Hamilton Township election does not take precedence over this or any other criminal matter, and I find it portentous that the defendant would ask to be treated differently than any other criminal defendant simply because of her status as Mayor of Hamilton Township. The State received defendant's brief on the motion just yesterday and cannot effectively prepare and respond in the timetable suggested by the defendant. The State is prepared to appear for the pre-trial conference on Thursday, September 19, in accordance with Judge Haley's order, and will comply with a briefing schedule set by the court when it is received.

Therefore, the State requests that this court deny the leave to appeal and allow the matter be handled in the Municipal Court. If this court is inclined to grant the defendant leave to appeal, the State respectfully requests that this court provide a hearing date and briefing schedule in accordance with the Rule, allowing the State to file and serve a brief in opposition at least 3 days prior to the hearing.

Respectfully submitted,



Kathleen M. Petrucci  
Supervising Assistant Prosecutor  
Attorney No. 023641998

cc: Robin Kay Lord, Esquire (via email - robin@robinlordlaw.com)