

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
 BY ACTING ATTORNEY GENERAL
 THOMAS W. CORBETT, JR.
 Plaintiff / Appellee

v.

Claudia Ann: Montelione,
 NOTARY PUBLIC
 Defendant / Appellant

Docket No. 757 CD 2008

BRIEF AMICUS CURIAE
FOR APPELLANT
In Response to BRIEF FOR APPELLEE

COMES NOW Eugene A. Wrona, Affiant and friend of the court, as a party interested in the questions involved to file a brief amicus curiae as permitted by Pa.R.A.P. 531 in regard to those questions in the matter before this Honorable Court. Affiant is constrained to respond to the false, malicious, and disparaging remarks about him in the BRIEF FOR APPELLEE.

It was important for the lower court, judge Lawrence F. Clark, Jr., and Appellee, by and through Kathryn H. Silcox, to defame and disparage the character and integrity of Affiant on the record.

It is therefore equally important for this Honorable Court to learn the TRUTH, and to incorporate that truth in the final determination of the matters before it concerning Appellant.

Equity and justice requires that the lower court and Appellee be afforded the opportunity to answer this Brief. Justice and Honor demand that any answer submitted be submitted **under oath**.

Application for Leave to Present Oral Argument

With permission of this Honorable Court, the undersigned friend of the court respectfully requests approval of the Court for leave to present oral argument in support of his Brief Amicus Curiae. The injuries inflicted upon the character and integrity of the undersigned by the lower court judge and Appellee require a full and fair opportunity for the undersigned to respond on the record to his accusers and to set the record straight.

Statement of the Case

Facts not in Dispute:

Appellant, Claudia Ann: Montelione, is a notary public in Pennsylvania, commissioned by the Secretary. In addition, Appellant also operates a small desktop publishing and secretarial business registered with the Commonwealth as "THE PENNY PINCHER PRESS", hereafter "PPP".

Appellee, a.k.a. the "Commonwealth", claims to be a government agency, the Bureau of Consumer Protection, hereafter "BCP", under the Office of Attorney General of Pennsylvania, Thomas W. Corbett, Jr., hereafter "AG" or "Corbett".

Kathryn H. Silcox, Esquire and Michael Gerdes, Esquire represented BCP during the period in question. BCP pretends to have become the "enforcement" agency to a "voluntary" contract with Appellant over all of Appellant's business contracts. A contract under the UCC imposes an obligation of good faith in the performance or enforcement of contracts. See Stmt. of Law, UCC 1-203.

Appellee contacted Appellant in October of 2007 at her place of business in Scranton, Lackawanna County, PA. The first communication was by First Class U.S. postage and demanded that Appellant produce records for an "investigation" by the Commonwealth. The document fails to identify whether it applies to PPP or to the notary service provided by Appellant. The document fails to distinguish between PPP and the notary service, and fails to state whether alleged events to be investigated occurred in Pennsylvania, or elsewhere. The demands are overly broad, burdensome and appear to intrude on the rights of Appellant under the Fourth and Fifth Amendments to the U.S. Constitution et al.

Appellant returned the document conditioned upon a showing that the Commonwealth had a basis to investigate. Appellant demanded to know the nature and basis for the action; *i.e.*, complaint. Appellant acted with "honor" to the presentment by Appellee.

Appellee abandoned "good faith" performance by refusing to provide any information to Appellant regarding the nature and basis for the action, relying on the Administrative Code, 71 P.S. § 307-2(1), as the authority "To investigate commercial and trade practices ...". See BRIEF FOR APPELLEE.

BCP contends that its authority arises under the "enforcement" provision of the Pennsylvania UCC, Title 13 Pa.C.S. The UCC is the codification of the international "law of contracts". Appellee acted in "dishonor" of the good faith duty for the enforcement of contracts under the UCC.

The Administrative Code clearly invokes Pennsylvania's UCC. All commercial and trade practices arise from [or are] a contract.

Appellant demanded that BCP conduct the transaction in good faith, absent which there is NO AGREEMENT or "meeting of the minds". Appellant does not agree to be a "debtor" to BCP "creditor" who refuses to conduct the transaction under good faith enforcement standards and duty.

When Appellant continued to demand "good faith" enforcement by BCP, demanding production of

the “complaint” against her, BCP served Appellant with a subpoena to demand [compel] the production of documents and materials to conduct its “investigation”. The subpoena was served on Appellant in Scranton, Lackawanna County, PA. By this service, BCP established by contract that jurisdiction for any actions between these parties is vested in Lackawanna County court as “*forum contractus*”. See Stmt. of Law; Pa.R.C.P. Rule 1006 and Black’s Law definition, *infra*.

BCP is estopped by its prior actions from asserting jurisdiction other than in Lackawanna County.

In Pennsylvania, the issuance of subpoenas must be conducted pursuant to Rules of Civil Procedure. See Stmt. of Law; Pa.R.C.P. 234.1(a) and (c), *infra*. BCP failed to comply with Rule 234.1(a) and (c), failing to comply with its duty of good faith in performance or enforcement.

Appellant responded to the subpoena as before, demanding that BCP establish its authority [jurisdiction] to investigate PPP or her notary service.

Appellee exercised impermissible obdurate and vexatious conduct in refusing to answer.

BCP filed an action [Motion For Sanctions] in Dauphin County court to compel Appellant’s performance under the subpoena. There was no prior action in Dauphin or any other county against Appellant. Pa.R.C.P. Rules 1006 and 1007 establish the RULES under which actions in Pennsylvania courts must be commenced and the Venue for such court actions.

Appellant was summoned to Dauphin County under threat of arrest if she didn’t appear to answer Appellee’s Motion for Sanctions (compel performance) as filed by BCP. The hearing was scheduled for March 4, 2008. Appellee’s Motion For Sanctions fails to comply with Pa.R.C.P. Rules 1006 and 1007.

Appellant challenges the authority [jurisdiction] of Dauphin County court to hear the matter. Jurisdiction may be challenged at any time. See *Basso*, *infra*. Under Pa.R.C.P. 1006, Lackawanna County is the *forum contractus*, the place where jurisdiction must be vested.

Appellant made a “special appearance” to challenge the jurisdiction in Dauphin County. Appellant was accompanied by a next friend to provide “assistance of counsel” as permitted under statutory Law. See Stmt. of Law; 1 Pa.C.S. § 1503, invoking Colonial Law; e.g., Frame of Government of 1682.

Lawrence F. Clark, Jr., assumed jurisdiction for Dauphin County and conducted a “hearing” on March 4, 2008. At the beginning of the hearing, Clark arbitrarily removed the “assistance of counsel” from the well, leaving Appellant, untrained in the law, to fend for herself. See due process.

BCP did not move for the removal of the assistance of counsel. Clark acted arbitrarily and of his own volition to deprive Appellant of the assistance of counsel and due process of law. By this action, Clark forfeits any jurisdiction which may have been vested in Dauphin County.

Appellant filed several documents with the court.

Clark “disposed” of each of Appellant’s questions with a “Non-Entertaining Order”. See Clark’s Memorandum. Not one of Appellant’s pre-trial issues was reviewed “on the merits”.

Clark subsequently acted inappropriately in a judicial capacity to compel performance with the

subpoena or be held in contempt of court after forfeiting jurisdiction by compelling Appellant to proceed without the assistance of counsel. See Brief For Appellant, *Hyle v. Hyle*.

Appellant continued to exercise her rights as a citizen under the U.S. Constitution and as she understands PA Rules of Civil Procedure.

Clark scheduled a hearing for March 28, 2008, and when Appellant failed to appear, Clark issued a bench warrant for her arrest, had her dragged against her will from Lackawanna County to Dauphin County where she was imprisoned for more than six (6) months for contempt. Clark denied her bail on the contempt charge, contrary to PA Law.

BCP offered "no evidence" of a crime or of fraudulent commercial practices.

The Commonwealth subsequently filed criminal charges against Appellant under 18 Pa.C.S. §4953.1 A, §4911 A2, and §4703. These crimes were allegedly committed while Appellant was still incarcerated for contempt. The court offered bail in the amount of \$100,000.00 for these offenses.

Dauphin County continues to pursue Appellant on these collateral issues even though jurisdiction allegedly transfers to this court upon taking an appeal.

Statement of Laws [Emphasis added.]

U.S. Constitution, Article VI, clause 2.

Supremacy clause.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and **the Judges in every State shall be bound thereby**, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Title 1 Pa.C.S.

§ 1503. Applicability of colonial law.

- (a) English law.- The common law and such of the statutes of England as were in force in the Province of Pennsylvania on May 14, 1776 and which were properly adapted to the circumstances of the inhabitants of this Commonwealth shall be deemed to have been in force in this Commonwealth from and after February 10, 1777.
- (b) Provincial statutes.- The statutes enacted on or before May 14, 1776 under the authority of the late Proprietaries of the Province of Pennsylvania have the same validity and effect as statutes enacted under the authority of this Commonwealth.
- (c) Exceptions.- The rules specified in subsections (a) and (b) of this section shall not be applicable to any statute or law which:
 1. has been heretofore or is hereafter amended or repealed or which has expired by its own limitation;
 2. orders the taking or subscribing any oath, affirmation or declaration of allegiance or fidelity to the British crown;

3. acknowledges any authority in the heirs or devisees of William Penn, Esq., deceased, the former Governor of the Province of Pennsylvania, or any other person whomsoever as Governor of the Province of Pennsylvania; or
4. is repugnant to the Constitution of this Commonwealth or of the United States.

The [Pennsylvania] Frame of Government of 1682: Excerpt [Emphasis added.]

VI. That, in all courts all persons of all persuasions may freely appear in their own way, and according to their own manners and there personally plead their own cause themselves; or, if unable, **by their friends; and the first process shall be the exhibition of the complaint in court, fourteen days before the trial;** and that the party, complained against, may be fitted for the same, he or she shall be summoned, no less than ten days before, **and a copy of the complaint delivered him or her, at his or her dwelling house.** But before the complaint of any person be received, he shall solemnly declare in court, that he believes, in his conscience, his cause is just.

Pa Rules of Civil Procedure

Pa.R.C.P. 234.1. Subpoena to Attend and Testify.

(a) A subpoena is **an order of court** commanding a person to attend and testify at a particular time and place. It may also require the person to produce documents or things which are under the possession, custody or control of that person.

(b) N/A

(c) A subpoena may not be used to compel a person to appear or **produce documents or things ex parte before an attorney**, a party or a representative of the party.

Pa.R.C.P. 1006. Venue. Change of Venue.

(a) Except as provided by Subdivisions (b) and (c) of this rule, an action against an individual may be brought **in and only in** a county in which the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law.

(b) N/A

(c) N/A

(d) N/A

(e) Improper venue shall be raised by preliminary objection and if not so raised shall be waived. If a preliminary objection to venue is sustained and there is a county of proper venue within the State the action shall not be dismissed but shall be transferred to the appropriate court of that county. The costs and fees for transfer and removal of the record shall be paid by the plaintiff.

(f) N/A except for the application of Rule 1020(a).

Pa.R.C.P. 1007. Commencement of Action.

An action may be commenced by filing with the prothonotary

- (1) a praecipe for a writ of summons, or
- (2) a complaint.

Uniform Commercial Code [UCC]

1-203 Obligation of Good Faith. [13 Pa.C.S. § 1203].

“Every contract or duty within this Act imposes an obligation of good faith in its performance **or enforcement.**”

DEFINITION:

Forum contractus. The forum of the contract; the **court** of the place where a contract is made; the place where a contract is made, considered as the place of **jurisdiction.**

Black’s Law Dictionary. 6th Edition, page 655.

SUMMARY OF ARGUMENT

For every Argument below, Appellant incorporates the ‘supremacy clause’, of the U.S. Constitution, as the standard by which all State laws must be interpreted. All judges are bound thereby. See Stmt. of Laws, U.S. Const., Article VI, clause 2,

Appellee failed to establish an AGREEMENT with Appellant as to whether Appellee could enforce Pennsylvania Law against Appellant under the PA Rules of Civil Procedure and the UCC.

PA Law requires that a defendant be informed of a complaint against him/her prior to trial. Appellee failed to disclose the nature of the charges against Appellant and the basis for BCP’s authority to investigate the commercial transactions of Appellant.

A government agency has the burden of proof to establish its authority [jurisdiction] to act. BCP is an agency within the Pennsylvania government. As such, it has no authority outside the territorial borders of this Commonwealth.

Appellee has no jurisdiction to investigate events occurring outside the territorial borders of the Commonwealth. Appellee failed to disclose whether the transactions to be investigated occurred or took place in Pennsylvania or in some foreign jurisdiction whereby BCP through the Attorney General of Pennsylvania has no jurisdiction to act, whether under the Administrative Code or under color of law.

Without a ‘consumer complaint’ that evidences questionable business transactions in Pennsylvania, the Pennsylvania BCP has no basis “(1) to investigate commercial and trade practices ... (2) to investigate fraud, misrepresentation and deception ... (3) To do such other acts as may be incidental to the exercise of its powers and functions. See 71 P.S. § 307-2(1), Brief for Appellee, page 6.

BCP failed to produce substantial evidence to support its jurisdiction to investigate Appellant.

The subpoena served by BCP upon Appellant is invalid and unenforceable for lack of jurisdiction or AUTHORITY in Appellee to proceed. Further the subpoena is **defective** for failure to comport with requirements of Pa.R.C.P. 234.1 (a) and (c). Because the subpoena is invalid, enforcement under the UCC or the Administrative Code is also invalid.

Nevertheless, if the subpoena were valid, then enforcement jurisdiction would be in Lackawanna County where the instrument was served; the *forum contractus*.

Under Pa.R.C.P. 1006 and the UCC, Lackawanna County is the *forum contractus*.

Appellant challenges jurisdiction in Dauphin County.

Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. *Schroech v. Pa. State Police*, 26 Cmwith. Ct. 41, 362 A2d 486 (1976). See *McNutt v. GMAC*, 298 US 178.

Dauphin County court cannot assume jurisdiction unless plaintiff establishes such jurisdiction when challenged by a defendant. BCP [plaintiff] failed to meet this burden and tendered “**no proof**” to the Dauphin County court on the issue of jurisdiction. **Strict proof to the contrary is demanded.**

Dauphin County court [Clark] erred as a matter of law when he assumed jurisdiction.

When a court compels a party to proceed without the assistance of counsel that court has deprived the litigant of “due process” forfeiting any jurisdiction that may have been vested in that court.

When a court proceeds or acts without jurisdiction, any actions taken in a judicial capacity are nullities, they are invalid and **void ab initio** and are therefore unenforceable.

The order entered by Lawrence F. Clark, Jr., on March 4, 2008, is invalid for lack of jurisdiction in Dauphin County. All subsequent orders, including summons to appear, bench warrants, criminal complaints et al are also invalid; *i.e.*, **void ab initio**. Such orders [actions] are products of a malicious, arrogant and vindictive judge acting in insurrection and rebellion against the U.S. Constitution.

This Honorable Court must declare all orders issued by Dauphin County in this matter to be **void**.

This court must find for Appellant on the issue of jurisdiction in Lackawanna County against Dauphin County for failure of the Attorney General and BCP to establish jurisdiction in Dauphin County. Jurisdiction was established in Lackawanna County as the *forum contractus*.

BRIEF DISCUSSION

Appellant is not trained in the law and does not pretend to be trained in the law. She is, however, competent at reading, reading comprehension, and reasonably able to resolve issues when the facts appear in clear and unambiguous language.

Brief For Appellee [page 2] states that “the Commonwealth learned that Appellant has engaged in the unauthorized practice of law ...”. This statement is categorically false.

The lower court [Clark] disparages Appellant with his deprecating language; e.g., “Unfortunately for the Appellant” [Memo, page 11 – twice], and “it appears to be her patently erroneous belief ...”

Appellant does not “believe that the Attorney General must first file a formal action before a subpoena ... may be issued” as stated by Clark [Memo, page 11-12]. Clark misconstrues Appellant’s demand upon BCP [and AG], and presents an answer to a different issue.

Appellant **does believe** that the government must show probable cause in order to intrude into the personal business or business practices of any enterprise, and she believes that “probable cause” can only emanate from a “complaint” to the government from another person who swears to the righteousness of their claim. See Stmt. of Laws, Frame of Govt., *supra*.

Appellant merely demanded that BCP produce “the consumer complaint”, to which she offered to respond. Instead, BCP refused to show “probable cause” via a complaint [against PPP].

Appellant believes, perhaps another “patently erroneous belief”, that the law, based on her reading and interpretation of the clear and unambiguous language of Pa.R.C.P., requires that subpoenas comply with the law and the issuance thereof must arise from an action before a court of competent jurisdiction. The published law holds that “A subpoena is a court order ...” [234.1(a)], which reasonable minds could agree that commencing a legal action was first necessary.

Further, Rule 234.1(c) prohibits the use of a subpoena “to compel a person to appear or to produce documents or things ex parte before an attorney, ...”

Appellant believes that BCP failed to comply with 234.1(a) and that BCP issued the subpoena “to compel [her] ... to produce documents or things ex parte before an attorney.”

If that is a patently erroneous belief, the lower court should address those issues to explain in plain language how Rule 234.1 should be interpreted.

Appellant has the apparently “patently erroneous belief” that she should be served with due process via “notice” reasonably calculated to apprise her of the nature and cause of the action against her. Appellant also believes that the “government” may not intrude into the lives or business practices without “probable cause”. She clearly and obviously has the patently erroneous belief that the Fourth Amendment protects all persons from intrusive actions by the government.

She also has the patently erroneous belief that the court, via judges sworn to uphold the Constitution, have a **duty** to protect those rights against tyrannical and oppressive actions of a government. Compelling performance of the subpoena violates protections against intrusive government actions secured under the Fourth and Fifth Amendments.

Clark has the patently erroneous belief that Appellant represented herself in Dauphin County court [Memo, page 11]. Appellant appeared “as herself” and without representation.

Clark cites case law [Memo, page 12 – *Cmwlth. v. Tri-State*] to uphold the BCP action allowing the issuance of subpoenas outside the scope of Rule 1007. Appellant distinguishes.

The court errs.

In *Tri-State*, there were “two specific individuals who had filed complaints about the appellant’s services.” [Memo, page 12] Revealing this information [complaints] to *Tri-State* satisfies a portion of the “notice” requirement.

Tri-State supports Appellant’s demand that she is entitled to know the name(s) of her accuser(s) and the nature and cause of their alleged injury by producing their “complaint(s)”.

Appellant believes, and it has not been shown to be an erroneous belief, that BCP is not in possession of a “complaint” by a consumer, that BCP is not acting to protect the public from

Appellant's fraudulent business practices etc., that the events that initiated the "investigation" are outside the jurisdiction of BCP, **and** that BCP is acting on behalf of a "foreign" agent.

The subpoena is actually evidence of a "fishing expedition" by BCP. BCP attempts to "weasel in" to examine Appellant's notary services via PPP.

Appellant has the patently erroneous belief that under Pennsylvania law, she is entitled to the same information [complaint] in possession of BCP that initiated the alleged "investigation".

Finally, Appellant believes that under the clear and unambiguous language of Rule 1006 that BCP established Venue and in personam jurisdiction, and quite possibly subject matter jurisdiction in Lackawanna County, and NOT DAUPHIN COUNTY when it served the subpoena.

Unfortunately for Appellant, BCP chose to go forum shopping, and Clark obliges.

It appears that Clark intentionally misconstrues the facts of the instant case, and that he has a pre-determined outcome and is willing to misrepresent or misconstrue the law to support that pre-determined outcome.

Affiant will not attempt to discuss the convoluted reasoning of the Supreme Court in *Tri-State* other than to remind this Honorable Court that case law is not law, but the 'supremacy clause' is. Any case law that may be interpreted contrary to the supremacy law cannot be upheld.

Finally, Clark fails to explain how and why criminal charges were filed against Appellant and her daughter, who were both incarcerated "without a trial" and without prior notice of any criminal investigation or indictment before a grand jury. Search and seizure warrants were issued for persons and property without probable cause, utilizing the "panzer" squad of the acting Attorney General.

These criminal charges are an obvious effort by the Commonwealth to "criminalize" Appellant's conduct in the exercise of her rights under the First [redress of grievances], Fourth [security in their persons, etc.], Fifth [witness against self], Sixth [to be informed of the nature and cause of the accusation, etc.] Amendments to the U.S. Constitution et al.

This matter is a travesty of justice.

Appellant and Affiant have a patently erroneous belief that The Commonwealth of Pennsylvania IS NOT A POLICE STATE. We ask that this Honorable Court affirm.

ARGUMENT FOR AMICUS CURIAE

1. *The OFFICE OF ATTORNEY GENERAL through the Bureau of Consumer Protection has authority to issue subpoenas only where a commercial business enterprise executed a transaction in Pennsylvania that fails to comply with the Uniform Commercial Code and a consumer has requested an investigation by the Office of Attorney General.*

In the matter before this Honorable Court, BCP issued a subpoena to coerce Appellant to waive her

rights under the false pretense of an “investigation”. BCP was on a fishing expedition.

Appellee [BCP] cites Administrative Code, 71 P.S. § 307-2(1), as the authority “To investigate commercial and trade practices ...” See Brief For Appellee. Appellee errs as a matter of Law.

The interpretation of the Administrative Code by BCP and the lower court is repugnant to the Constitutions of Pennsylvania and the United States. Accordingly, that interpretation must fail.

Notwithstanding, BCP [or AG] may only have limited jurisdiction to investigate commercial transactions under the Administrative Code if the transactions were conducted within the borders of the Commonwealth. Pennsylvania law enforcement officers may not transgress state lines without a warrant.

On the one hand, there must be a complaint served upon defendant under Pennsylvania Law. See Stmt. of Laws, **Frame of Govt.**, supra.

On the other hand, BCP and the AG lack jurisdiction to investigate the business practices of Appellant unless the practices under investigation occurred in Pennsylvania. BCP has no authority to investigate where the forum actus or forum rei gestae is foreign to Pennsylvania.

Subject matter jurisdiction applies equally to enforcement branches of government as to the judicial branch. Appellant challenged BCP authority [jurisdiction]. BCP failed to present any evidence that it had jurisdiction to act. Such proof is, or should be readily available by producing a complaint that PPP acted contrary to the business ethics prescribed under the Pennsylvania UCC.

Absent such proof, Appellant was not served notice that she conducted any business transactions contrary to the good faith doctrine of the UCC.

Every transaction between the government or its agent and a person takes the form of a “contract”. Under the UCC, a party to a contract is either a “Creditor” or a “Debtor”.

When the government pursues an individual for enforcement, the presumption is that the government is the Creditor, the secured party, and defendant is the “Debtor”. Any action by the government becomes a “commercial” transaction since the government brought forward the action without a criminal complaint. UCC rules apply.

Appellee assumes that Appellant voluntarily consents to a contractual relationship with the Commonwealth, or that its correspondence creates a contractual relationship. Appellee errs as a matter of law. There must be a “meeting of the minds” in order to create an agreement, without which NO CONTRACT has been established. Conditional acceptance is not agreement.

Under UCC 1-203 (13 Pa.C.S. § 1203), “Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement.” Simply stated, BCP has an obligation of good faith [honesty in fact in the conduct or transaction concerned] and dealings with Appellant even as it pretends to enforce the “alleged” contracts of Appellant.

In the event that a “commercial transaction” exists between these parties, the UCC is the governing law. The BCP sees itself as the enforcement agent for commercial enterprises such as PPP. As such, BCP has a “duty” to conduct its enforcement proceedings in good faith. UCC 1-203.

When BCP refuses to disclose the nature and basis of the action, then BCP appears to be **in breach** of its duty of good faith enforcement.

1.a *The Bureau of Consumer Protection may only issue subpoenas in compliance with Pennsylvania Rules of Civil Procedure pursuant to the ‘supremacy clause’ of the U.S. Constitution and the published Pennsylvania statutes.*

Appellee acted in “dishonor” of the good faith duty for the “enforcement” of contracts under the UCC. In order to issue a subpoena, a court order is necessary pursuant to Pa.R.C.P. 234.1(a). BCP issued a subpoena to compel Appellant to produce documents or things *ex parte* before an attorney [Silcox] in direct conflict with Pa.R.C.P. 234.1(c).

BCP failed to comply with Pa.R.C.P. 234.1(a) and (c), failing to comply with its duty under the UCC of good faith in performance or enforcement. The Secretary of the Commonwealth [and not the Attorney General] has authority to investigate notary public services for disciplinary purposes.

As the breaching party regarding good faith performance under the UCC, BCP appears before the lower court and before this Honorable Court with unclean hands. The Commonwealth is entitled to no relief under the “clean hands doctrine”. See Black’s Law.

2. *The lower court judge acted outside his authority when he assumed jurisdiction of a matter where plaintiff failed to meet its burden of proof to establish jurisdiction over the subject matter and after the **forum contractus** had been established.*

The record is clear that Appellant challenged the jurisdiction of the Commonwealth [BCP] to act [investigate] and challenged the jurisdiction of a Dauphin County court to hear Appellee’s Motion For Sanctions. Settled law as contained in the Frame of Govt., *supra*, requires plaintiff [Commonwealth] to serve a complaint upon a defendant and further, as cited below, to present evidence showing that jurisdiction is conferred upon Dauphin County. Re “complaint”; see Frame of Govt.

It appears that Appellee went forum shopping.

The record is equally clear that BCP created the *forum contractus* in Lackawanna County when it served a subpoena upon Appellant in Lackawanna County. See Pa.R.C.P. 1006.

In the matter before the Court, a Writ of Coram Non Judice against Dauphin County Court of Common Pleas is appropriate.

In presence of a person not a judge. When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be coram non judice, and the judgment is void.

An abundance of law supports Appellant's argument that Dauphin County court acted without jurisdiction and that Appellant was deprived of due process of law. Among other transgressions, each of the orders issued in Dauphin County are nullities, *void ab initio*, and are therefore unenforceable.

In a court of limited jurisdiction, whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject-matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it.").

Until the plaintiff submits **uncontroversial evidence** of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc.*, 168 Ill.App.3d 558, 522 N.E.2d 841(1988).

"Jurisdiction can be challenged at any time, even on final determination."
--*Basso v. Utah Power & Light Co.*, 495 2nd 906 at 910.

Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. *Schroech v. Pa. State Police*, 26 Cmwlth. Ct. 41, 362 A2d 486 (1976). See *McNutt v. GMAC*, 298 US 178. The origins of this doctrine of law may be found in *Maxfield's Lessee v. Levy*, 4 US 308.

"The proponent of the rule has the burden of proof." -- Title 5 U.S.C., Sec. 556 (d).

"The law provides that once State and Federal jurisdiction has been challenged, it must be proven." -- *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215.

"A universal principle as old as the law is that a proceedings of a court without jurisdiction are a nullity and its judgment therein without effect either on person or property." *Norwood v. Renfield*, 34 C 329; *Ex parte Giambonini*, 49 P. 732.

"Jurisdiction is fundamental and a judgment rendered by a court that does not have jurisdiction to hear is void ab initio." In Re Application of Wyatt, 300 P. 132; Re Cavitt, 118 P2d 846.

"Thus, where a judicial tribunal has no jurisdiction of the subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term." *Dillon v. Dillon*, 187 P 27.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." *Merritt v. Hunter*, C.A. Kansas 170 F2d 739.

"Once jurisdiction is challenged, it must be proven." --*Hagens v. Lavine*, 415 U.S. 533.

"Where there is absence of jurisdiction, all administrative and judicial proceedings are a nullity and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." --*Thompson v. Tolmie*, 2 Pet. 157, 7 L.Ed. 381; *Griffith v. Frazier*, 8 Cr. 9, 3L. Ed. 471.

"No sanctions can be imposed absent proof of jurisdiction."
--*Standard v. Olsen*, 74 S. Ct. 768; Title 5 U.S.C., Sec. 556 and 558 (b).

The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. **Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge under court decisions has immediately lost subject-matter jurisdiction.** In a court of limited jurisdiction, the court must proceed exactly according to the law or statute under which it operates. --*Flake v Pretzel*, 381 Ill. 498, 46 N.E.2d 375 (1943) ("the actions, being statutory proceedings, ... were void for want of power to make them.") ("The judgments were based on orders which were void because the court exceeded its jurisdiction in entering them.

The Commonwealth, by the AG or BCP, failed to tender any evidence to establish Dauphin County as the appropriate Venue in the matter vs. Claudia Montelione. Accordingly, Dauphin County court is powerless to act on Appellee's Motion, and powerless to issue sanctions. The proceedings below as appealed by Appellant are a nullity for lack of jurisdiction in Dauphin County!

Dauphin County officers continue to harass and terrorize the Montelione family. After an appeal is taken, jurisdiction transfers immediately from the lower court to the appellate court, preventing honest courts from continued harassment of appellants.

Dauphin County does not respect the Law.

Sanctions must be issued against Dauphin County to prevent any person within that county from issuing any orders or documents intended to have a legal effect or from any conduct that threatens harm or the deprivation of Appellant's rights at risk of personal accountability and personal liability.

Appellant must be restored to the position she occupied before she was deprived of due process.

3. *The lower court judge acted outside his authority when he assumed jurisdiction over the person of defendant contrary to well settled law.*

Pa.R.C.P. 1006 is controlling as to in personam jurisdiction in a court.

"..., an action against an individual may be brought **in and only in** a county in which the individual may be served ..."

BCP created the *forum contractus* in Lackawanna County. BCP tendered no evidence contrary to in personam jurisdiction in Lackawanna County.

A finding that Dauphin County lacked in personam jurisdiction is required according to law.

4. *The lower court judge abused his discretion when he arbitrarily deprived a defendant of the assistance of counsel.*

Title 1 Pa.C.S. § 1503 incorporates "Colonial Law" throughout the Commonwealth. The **Frame of Government of 1682**, a contract between William Penn and the crown of England permits a person to appear in their own person or to have the assistance of a friend --- the friend need not be a member of the BAR. See Stmt. of Laws, Frame of Govt., supra. **Strict proof to the contrary is required.**

Appellee fails to present one scintilla of evidence or law to support any argument that challenges Appellant's position, or that supports Appellee's defective restatement of the question.

Appellee does not even attempt to discuss "assistance of counsel". Instead, she presents disparaging and malicious statements that impugn the character and integrity of the undersigned Affiant and libels an honest attorney **in a public document**.

The issue appealed from is whether the lower court denied Appellant due process when it removed her 'assistance of counsel' from the well. The issue is broad according to law. A person shall be afforded the assistance of counsel, and the law does not require that the person chosen to provide that assistance shall be a lawyer, and must be a member of the Bar. Assistance of counsel may be provided by a person "untrained" in the law. Strict proof to the contrary is demanded.

Therefore, it matters not whether the "assistance of counsel" is a disbarred attorney, a priest, or a justice on the Supreme Court. He may provide assistance of counsel to any person accepting his services and may not be removed by any court lest that court perpetrate a treason against the U.S. Constitution.

The lower court erred as a matter of law when it deprived Appellant of the assistance of counsel and immediately forfeited any jurisdiction it may have enjoyed.

The lower court and BCP [Silcox] misrepresent fact and law to the detriment of Appellant. False statements regarding the character and integrity of Affiant must not go unanswered and unchallenged.

"Silence can only be equated with fraud where there is a legal or moral duty to speak or when an inquiry left unanswered would be intentionally misleading." See *U.S. V. Tweel*, 550 F.2d.297.

Affiant is constrained to challenge the statements of Clark and Silcox, serving notice that he does not accept the denigration of his character and integrity via false accusations and attacks. Affiant demands that Clark and Silcox produce evidence in support of their statements as addressed herein.

The issue on appeal is whether Appellant was deprived of the assistance of counsel. The lower court avoided addressing this issue by discussing the qualities and/or qualifications of the undersigned Affiant, Eugene A. Wrona.

Clark "arbitrarily and capriciously" deprived Appellant of the assistance of counsel as required and permitted by the Constitution and Pennsylvania Law. See inter alia Stmt. of Laws, Frame of Govt., supra.

In his discussion, judge Clark refers to the undersigned in the most disparaging manner, introducing him as "none other than Mr. Eugene Wrona", as if some level of infamy were associated with "Mr. Wrona." Clark continues "... a defrocked and disbarred former lawyer in this Commonwealth." And further, "and his scurrilous activities perpetrated against the Honorable Alan M. Black, of the Lehigh County Court of Common Pleas, and other Judicial Officers and related Court personnel." Clark must be compelled to identify one "scurrilous" activity perpetrated against Alan M. Black or others.

Clarks statements are categorically false. According to Black's Law Dictionary, Mr. Eugene Wrona remains a lawyer and categorically denies that he has been disbarred and/or defrocked.

Judge Clark heard from the lips of Affiant, attorney Eugene A. Wrona, that under Pennsylvania Rules of Disciplinary Enforcement and settled law for disciplinary actions, he is not disbarred.

First, Affiant stated to the court that there is no order of disbarment signed by a Justice of the Pennsylvania Supreme Court. Without a signed order, a lawyer cannot be disbarred.

A review of Rules for Disciplinary Enforcement, to wit, Rule 208, will inform Clark and Silcox that an attorney shall not be disbarred unless that attorney is heard by the Supreme Court of Pennsylvania. The decision is not discretionary. Attorney Wrona's demand for a hearing before the Supreme Court was DENIED. Accordingly, under PRDE Rule 208, attorney Wrona could not possibly have been disbarred.

Second, disbarment merely expunges one's membership from "The Bar of the Commonwealth of Pennsylvania". Disbarment does not expunge a license to practice law or expunge a person's Juris Doctorate degree or his qualifications as attorney who passed the Bar exam. Disbarment certainly does not prohibit further involvement of legal matters. **Strict proof to the contrary is demanded.**

Clark included these derogatory remarks for their prejudicial value, and with reckless disregard for the truth or falsity thereof. They are libelous remarks arguably intended to injure Affiant.

Affiant issues an invitation to Lawrence F. Clark, Jr. to either produce an order signed by a Justice of the Supreme Court of Pennsylvania, or he shall withdraw the false and misleading remarks published in a public document, the Memorandum filed in Dauphin County court on or about July 31, 2008 that contains the false, malicious and libelous remarks about attorney Eugene A. Wrona. This offer is extended to permit Lawrence F. Clark, Jr., to correct his errors and to mitigate damages.

In the alternative, Affiant shall be free to exercise his rights under the First Amendment.

No man is above the law.

Silcox argues for Appellee as follows: "Mr. Wrona was disbarred by the Pennsylvania Supreme Court for his repeated dishonesty and false accusations." And further: "In the decision handed down by the Disciplinary Board of the Supreme Court, the Board stated ..." "Mr. Wrona" refers to the undersigned Affiant.

There is an inherent contradiction in these statements. See below.

Silcox later adds: "Since he has been disbarred, he is prohibited from involvement of legal matters and, by continuing to do so, he is engaging in the unauthorized practice of law."

Again, Silcox demonstrates her incompetence and ignorance of the law. .

The first statement: "... for repeated dishonesty and false accusations," is categorically false. The Disciplinary Board failed to present one scintilla of evidence that Mr. Wrona made even one dishonest statement about judges or the court. The Disciplinary Board failed to present one scintilla of evidence that Mr. Wrona made one false accusation about judge Alan M. Black or any other judge. **Strict proof to the contrary is demanded.**

The conduct of Alan M. Black and his associates as named by Affiant undermines the integrity of the judicial process and undermines public confidence in those proceedings. Criminal misconduct in Lehigh County court remains un-investigated by law enforcement. Mr. Wrona stood without remorse on the truth of his accusations at his disciplinary hearing, and stands on the truth of those accusations today.

Affiant accuses Alan M. Black of criminal misconduct as a co-conspirator in the criminal actions of Lehigh County courts for editing audio tapes of court hearings. The integrity of our courts and the public confidence in that institution is compromised by Alan M. Black and his co-conspirator associates.

Affiant stands by these and other accusations leveled against the court. Black was afforded the opportunity to deny the accusations of attorney Wrona under oath.

Black remained silent. See *U.S. V. Tweel*, supra.

Alan M. Black, select members of the Disciplinary Board and others were served with affidavits accusing them of criminal corruption, and were directed to respond or forever hold their peace. Not one of the accused broke their silence, thereby acquiescing to the truth of the accusations against them.

The second statement demonstrates the lack of due diligence exercised by Silcox. The Disciplinary Board of the Supreme Court lacks authority [jurisdiction] to hand down a decision. The Board is limited to making a recommendation. **Strict proof to the contrary is demanded.**

Silcox alludes to but does not define “the unauthorized practice of law”. Is it credible to be accused of an undefined offense? [Silcox uses this “offense” as justification for the BCP action to investigate Appellant as well.] Silcox further states that attorney Wrona “is prohibited from involvement of legal matters, ...”. That is a very broad and absurd statement which cannot possibly be true or sustained.

By her egregious misrepresentation of fact and law, Silcox exposes herself to be an incompetent as well as a dishonest practicing member of the Bar, using her office contrary to her duty as defined by the Uniform Bonding Code.

Silcox’s remarks are false, malicious, inflammatory and libelous against attorney Eugene A. Wrona. She published these remarks with reckless disregard for the truth or falsity thereof.

Silcox’s statements are untrue and are categorically denied by the undersigned Affiant who demands that Silcox **withdraw everything she prints under her ARGUMENT IV**, or swear to the truth of those statements under oath and penalty for perjury

This offer is extended to permit Kathryn H. Silcox, Atty. ID 81735, to correct her errors and to mitigate damages. In the alternative, Affiant shall be free to exercise his rights under the First Amendment against the Commonwealth.

Affiant and his clients have filed petitions to impeach judges who demonstrate egregious arrogance and disrespect for Law, and whose performance violates the Code of Judicial Conduct inter alia. Petitions for impeachment have been filed against Alan M. Black and Michael T. Conahan [Luzerne County].

On Jan. 27, 2009, the Wilkes-Barre Times Leader reports that **Michael Conahan** [judge] pleads guilty to federal charges and will be disbarred among other penalties.

4.a *The prosecution of Appellant and the persecution of attorney Eugene A. Wrona have important similarities.*

Appellant was engaged in performing notary services for a select group of individuals who have sufficient knowledge of the law that enables those individuals to seek an administrative remedy under the UCC to resolve disputes with second parties.

It appears that the State [Commonwealth] opposes the services provided by Appellant, even though those services are listed on the State's website for Notary Public services.

Appellant performed services clearly authorized under UCC 3-505 [13 Pa.C.S. § 3505]. In serving her clients, Appellant aroused the ire of the government, or perhaps merely the judicial branch of government, which supports the Bar Association.

For whatever reasons, which probably includes an instigation from a foreign government, State of Texas, and a foreign corporation, Dresser, Inc., a subsidiary of Halliburton, AG Corbett set his sights on Appellant, Claudia Ann Montelione, and her family.

Corbett via BCP and Pedro Cortes', Secretary of the Commonwealth initiated investigations into the professional conduct and practices of Appellant.

The Secretary was unable to find that Appellant "was engaged in the unauthorized practice of law". That investigation at least gives the appearance of respecting Appellant's rights.

On the other hand, BCP flagrantly and egregiously trampled on Appellant's rights, and employed a "friendly and prejudicial judge" to violate her right to freedom and a full and fair opportunity to present her case. BCP argues that they are above the law.

The AG appears to want Appellant and her daughter, Francesca Shannon: Montelione removed from the list of commissioned notary publics serving the people of this Commonwealth.

Similarly, Affiant was engaged in exposing the **criminal corruption** of the judicial system. He produced unrefuted and irrefutable evidence of the criminal alteration to audio tapes of court hearings in Lehigh County. Judges and the District Attorney and others, including the Office of Attorney General, refuse to investigate the criminal charges. Criminal complaints were filed with the U.S. Attorney office, who refused to accept them. Law enforcement from state and federal governments refuse to investigate criminal corruption of the judicial system, which is now diminished to a "legal" system for the distinct lack of "justice" in our courts.

The State decided to remove Affiant from the Bar. False accusations were prosecuted against him. Although the Disciplinary Board agreed to allow Affiant to record the hearings for his own protection,

when he appeared with certified video and audio professionals to record the hearings, a hasty decision to withdraw the permission was reached. Ironically, **the transcribed record of the hearings was edited**, as attested to under oath by Affiant and two other witnesses. The Disciplinary Board is also corrupt.

The criminal conduct within Pennsylvania courts undermines public confidence in the integrity of the judicial process and brings disrepute to the legal profession. Lawrence F. Clark, Jr. is a willing participant and co-conspirator in the scheme to defraud the public of the judicial process. His arrogance and disrespect for law recommends him for judicial discipline.

Clark's actions against Claudia Montelione take the form of vindictiveness and retaliation.

Just as the government could not tolerate accusations of the criminal alteration of court records, this government could not tolerate a Notary Public who distributes the means for private citizens to resolve disputes administratively instead of hiring a lawyer to drain their finances.

The Supreme Court unleashed its Disciplinary Board against Affiant.

Corbett unleashed his pit bull, BCP, to attack Appellant with all the fury in its corrupt arsenal, including the Special Investigative Division of the Pennsylvania State Police. Corbett / Silcox found a willing co-conspirator in Lawrence F. Clark, Jr.

The clear and unambiguous language of the supremacy clause makes it unlawful for any State to enact laws that abridges the Constitution. Accordingly, the interpretation of the Administrative Code advocated by Silcox, Clark, Corbett et al that allegedly grants unlimited power to the AG to override that Constitution and Pennsylvania Rules of Court cannot be correctly construed as granting such powers.

Corbett, Silcox, Clark et al are trained in the law. They each understand the supremacy clause, Article VI, clause 2 of the U.S. Constitution, *supra*. Each are supposed to have taken an oath of office to support that Constitution. See 42 Pa.C.S.A. § 2522 and Pa. Bar Association Rule 231(a).

Thomas W. Corbett, Jr. failed to comply with 42 Pa.C.S.A. § 2522 and Pa. Bar Association Rule 231(a). See Brief for Appellant. Corbett, Silcox, Clark et al each failed, "knowingly and intentionally", to honor their oath to support the Constitutions of the U.S. and Pennsylvania. Each commits treason against the United States Constitution.

The United States Supreme Court has clearly, and repeatedly, held that any judge who acts without jurisdiction is engaged in an act of treason. U.S. v. Will, 449 U.S. 200, 216, 101 S.Ct. 471, 66 L.Ed.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Engaging in an act of treason against the United States Constitution by any citizen of the United States is an act of war against the United States. Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

"Crime is contagious. If the government becomes a law breaker, it breeds contempt for the law, it invites every man to become a law unto himself; it invites anarchy."

- Justice Louis D. Brandeis: *Olmstead v. U.S.*

5. *When a court proceeds without jurisdiction, it abuses its authority and the actions in any judicial capacity are legal nullities, void ab initio, and all collateral issues, which may include scheduling orders, criminal charges by or against the court and prosecutors, etc. are preserved for appeal. Abuse of office invokes the "clean hands doctrine" from which no relief may be granted.*

Silcox established Lackawanna County as the *forum contractus*, then removed the matter to Dauphin County, contrary to settled Pennsylvania Law.

The abundance of case law cited in Affiant's Argument 2, support Appellant's position that jurisdiction, to the extent of any application of law is vested in Lackawanna County. Therefore, Dauphin County acted without jurisdiction.

Appellant was deprived of due process and must be restored -- as nearly as possible -- to the position she occupied prior to the deprivation of her rights by a corrupt judge in a corrupt court.

CONCLUSION


For the reasons and argument presented above, it is uncontestable that Dauphin County proceeded without jurisdiction against Appellant. Accordingly, its action --- to compel performance under the subpoena is invalid, a nullity, **void ab initio**. It follows, a priori, that the orders to appear for a contempt hearing, the order holding Appellant in contempt, the false criminal charges brought against her, six months incarceration under order of Clark, etc. etc. etc., are all invalid, legal nullities, **void ab initio** and unenforceable for lack of jurisdiction under the Law.

It is imperative that this court issue a "cease and desist order" against Dauphin County related to any actions involving and against Claudia [A.] Montelione, Appellant above.

Claudia Montelione must be restored -- as nearly as possible -- to the position she occupied prior to the egregious attacks upon her person and property by the Attorney General, Bureau of Consumer Protection, the Dauphin County Court of Common Pleas et al.

Date Jan. 29, 09

Respectfully submitted,


Eugene A. Wrona -- *Friend of the court*
 2040 Virginia Street
 Allentown, PA 18103
 Atty. ID 67880
 (610) 798-4840

VERIFICATION

I, Eugene A. Wrona, hereby verify that the statements of fact and averments contained in this instrument are true and correct to the best of my knowledge, information and belief. I consent to the penalty for perjury if this document contains any knowingly false statements or answers, pursuant to my sincerely held religious beliefs and spiritual training and as expressed in the Ninth Commandment. (Exodus 20:16)

DATED: the **twenty-ninth day** of the **first month** in the year of our Lord YHVH, anno Domini: **Two thousand and nine** {January 29, AD2009} in Allentown, Lehigh County, Pennsylvania.

SIGNED: Eugene A. Wrona
Eugene A. Wrona, Affiant



Amanda M. Wagner

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Amanda M. Wagner, Notary Public
City of Allentown, Lehigh County
My Commission Expires April 8, 2012
Member, Pennsylvania Association of Notaries

JURAT

Ss: Sworn to and subscribed before me by the above-named party, known or shown to be the party named, as true, correct, and not misleading, on this 29 Day of January, AD2009.

CERTIFICATION / PROOF OF SERVICE

Pursuant to Pa.R.A.P. 121, the undersigned Eugene A. Wrona does hereby aver that a true and correct copy of the above document was filed on behalf of Appellant and was served on the following on the date shown below and in the manner indicated.

1st Class U.S. Mail, Prepaid

Thomas W. Corbett, Jr.
Office of Attorney General
301 Chestnut Street, Suite 105
Harrisburg, PA 17104

Lawrence F. Clark, Jr. -- Judge
Dauphin County Court
Front and Market Streets
Harrisburg, PA 17101

Kathryn H. Silcox
Office of Attorney General
301 Chestnut Street, Suite 105
Harrisburg, PA 17104

Claudia Montelione -- Appellant
301 George Street, Suite 1
Throop, PA 18512 - 1212

Date: 1/30/09

SIGNED: Eugene A. Wrona
Eugene A. Wrona, Affiant