

COMMONWEALTH

: IN THE COURT OF COMMON PLEAS OF
: CENTRE COUNTY, PENNSYLVANIA

v.

:
: NO: CP-14-CR-2421-2011 &
: CP-14-CR-2422-2011

GERALD A. SANDUSKY

:
:

IN RE: APPEAL OF KARL E. ROMINGER, ESQ.



**CONCISE STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL**

1. The court erred in entering an Order which went beyond the protective order agreed upon at the hearing, when it unilaterally imposed a condition that counsel for the defendant certify under oath with whom discovery was delivered to, as this was not part of the agreement referenced in the preamble to the Order.

2. The Court erred in ordering counsel to divulge information which is essentially work product insomuch as revealing who counsel has shared discovery materials with and who counsel has sought the help of creates a situation where counsel is forced to divulge counsel's thought processes and/or strategies insomuch as they may be gleaned by the court or any opposing party or counsel who reviews them. The net effect of the Court's Order is to invade the province of attorney work product¹.

¹ Counsel respects what the Court is attempting to do, but believes after consultation with multiple prominent criminal defense attorneys, and based on his own reading of the law, that the Court Order essentially interferes with

3. The Court erred in retroactively imposing a protective order, inasmuch as while the parties agreed to the entry of a protective order going forward, there having been no protective order in place prior to said Order, the court lacked the authority to retroactively impose a protective Order concerning prior conduct, because there was no prohibition on the use of material gained in discovery, and therefore no reason for the Court to inquire about the previous use of said materials².

4. The Court erred, because the Pennsylvania Rules of Criminal Procedure do not authorize the court to craft a protective order which requires devolution of whom counsel worked or counseled with, nor whom counsel worked with or consulted in relation to any discovery materials which were not previously subject to any protective order.

5. The court lacked the power to enter a protective order which included provisions requiring counsel to divulge and describe how they had handled the discovery materials and who they were shared with when there was no hearing where such a finding could be made (if *arguendo* permissible), and there was no agreement or stipulation entered into such a provision in the protective order.

the work product of an attorney. Identifying who was consulted and / or with what materials breaches this carefully crafted wall, as an astute observer can determine the attorney's thought processes and case strategy are by for instance comparing the materials utilized with an Expert's or consulted individual's known field(s), or through other forms of divination. The discovery rules themselves protect work product.

² The analysis might be different, if after the issuance of a protective Order, materials covered therein were disseminated. There would be a breach of an Order to investigate, which is different than what the Court's stated purpose is here.

6. The court erred in crafting a protective order which was one sided, and was not reciprocal upon the Commonwealth, as the matters which do not concern Grand Jury materials are not in the purview of the Grand Jury Judge, and to the extent the Court has the power to enter such an Order, it should have been fully reciprocal.

Date:

July 12, 2012

Respectfully submitted,
ROMINGER & ASSOCIATES



Karl E. Rominger, Esquire
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CERTIFICATE OF SERVICE

I, Karl E. Rominger, Esquire, attorney for Defendant, do hereby certify that a true and correct copy of the within *Concise Statement* was served upon the following individuals on the below date, by first class mail and / or hand, postage paid at Carlisle, Pennsylvania:

Hon. John M. Cleland, Senior Judge
c/o Ms. Maxine Ishler, Court Administrator
Centre County Courthouse
102 South Allegheny Street
Bellefonte, Pennsylvania 16823

Jonelle H. Eshbach, Esquire
Senior Deputy Attorney General
Office of Attorney General
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16th Floor Strawberry Square
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Criminal Prosecutions Section
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Date: July 12, 2012

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