

**COMMONWEALTH**

**v.**

**GERALD A. SANDUSKY**

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

**:**

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

**:**

**:**

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

FILED FOR RECORD  
2012 AUG 13 A 10:24  
DEBRA C. IMPEL  
PROTODOTARY  
CENTRE COUNTY, PA

**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 agreement to the extent made in session to a protective order did not contemplate nor was any agreement made to require devolution of Counsel's past actions, nor was there any showing the same was necessary, as part of any protective order, nor do the rules of Criminal Procedure contemplate "retroactive" protection.
3. The Court erred in ordering counsel to divulge information which is essentially and is in fact 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 inasmuch 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 product<sup>1</sup>. Counsel hereby invokes the privilege applicable to attorney client communication and work product.

4. 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 materials<sup>2</sup>. Counsel hereby invokes the privilege applicable to attorney client communication and work product.
5. 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. The protective Order sought was one under the applicable

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<sup>1</sup> 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 and in fact interferes with 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. Had counsel chosen to file something that revealed a glimpse, the analysis would be different as to that, "glimpse".

<sup>2</sup> 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. For the Court to extend its authority to compel disclosure under these facts is an abuse of discretion.

criminal rules, which do not contemplate what was done. Counsel hereby invokes the privilege applicable to attorney client communication and work product.

6. 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.
7. 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. Presumably the Commonwealth could use that forum to shelter any embarrassing disclosures or wrong doing from the public eye, which creates a perception of unfairness and lack of public scrutiny.

Date:

8-10-12

Respectfully submitted,  
**ROMINGER & ASSOCIATES**



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Karl E. Rominger, Esquire  
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Supreme Court ID # 81924

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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 FED EX, postage paid at Carlisle, Pennsylvania:

Hon. John M. Cleland, Senior Judge  
c/o Ms. Maxine Ishler, Court Administrator  
&

The Clerk of Courts  
Centre County Courthouse  
102 South Allegheny Street  
Bellefonte, Pennsylvania 16823


Joseph Mc Gettigan, Esquire  
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Office of Attorney General  
Criminal Prosecutions Section  
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Norristown, Pennsylvania 19403

Date: 8-10-12

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