

May 13, 2014

Scott D. Dean
Address erased, but a
matter of public record

Certified mail # 7010 0290 0002 9510 6132

Jennifer Nicholson
Magisterial District Judge 53-3-2
605 Mt Jackson Rd.
New Castle, Penna. 16102

SUBJECT MATTER JURISDICTION CHALLENGE

Dear Ms. Nicholson:

I am in receipt of an official looking document styled as CITATION/SUMMONS #C1634325-0, dated May 2, 2014, that carries your office address and claims I am in violation of 75 Pa. C. S. Sec. 1301(a) and required to pay \$117.50 or make some type of pleadings before you within 10 days.(see attached copy).

I have written to Pennsylvania Secretary of Transportation Barry J. Schoch, P. E. requesting a determination by his department of whether or not his department has jurisdiction over travel, and I am the subject or object of their private in nature administrative law scheme. If it is determined that I am a person subject to said law scheme I have requested a hearing and adjudication before his department as provided for by Pennsylvania administrative law. If I feel I have been aggrieved by that adjudication I will appeal to the Court of Common Pleas also as provided for by Pennsylvania law. (see attached letter)

“We assume there could be no dissent from the proposition that an administrative agency has only such authority in the administration of a Congressional enactment as is expressly conferred, or as may be implied.” *Quaker Oats Co. v. Fed. Security Administrator*, 129 F. 2d 76, 80 (8th Cir. 1942), reversed on other grounds at 318 US 218 (1943)

“Agencies, whether created by statute or Executive Order, must of course be free to give reasonable scope to the terms conferring their authority, But they are not free to ignore plain limitations on that authority. *Peters v. Hobby* 349 US 331

Ms. Nicholson, you are in error, you are not a hearing officer for the Pennsylvania Department of Transportation and if you continue forward with any of the threats contained in item 5 on the reverse side of said CITATION/SUMMONS you will be proceeding on the false assumption that you have subject matter jurisdiction in the instant matter.

“An action by Department of Motor Vehicles, whether directly or through a court sitting administratively as the hearing officer, must be clearly defined in the statute before it has subject matter jurisdiction, without such jurisdiction of the licensee, all acts of the agency, by its employees, agents, hearing officers, are null and void.” *Doolan v. Carr*, 125 US 618; *City v. Pearson*, 181 Cal. 640

I am hereby giving NOTICE UPON YOU of these jurisdictional errors and also declaring my objection to any such presumption by you or anyone else at your office. I deny that I have any obligation to make any appearance, either special or general, before your "Local Agency."

"The requirement that jurisdiction be established as a threshold matter...is 'inflexible and without exception,' " *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 4 S. Ct. 510, 28 L. Ed. 462 (1884).

"Where plaintiff's preliminary objections raised the question of jurisdiction over the subject matter, although improperly, the court was bound to decide it, since the court was bound to decide such issue on its own motion if necessary." *Department of Highways v. Di Joseph*, 41 Pa. D. & C. 2d 435 (1967)

"There is no presumption in favor of jurisdiction, and the basis for jurisdiction must be affirmatively shown." *Hanford v. Davis*, 163 U. S. 273, 16 S. Ct. 1051, 41 L. Ed. 157 (1896).

"Once jurisdiction is challenged, it must be proven:" *Hagens v. Lavine*, 415 U. S. 528, 94 S. Ct. 1278, 39 L. Ed. 2d. 577.

I want to be very clear that I intend to obey all laws that legitimately impose a requirement or obligation upon me to appear. However, I will not voluntarily appear where no obligation exists, especially when the waiver of my inherent unalienable right to both substantive and procedural due process of law is involved. I am relying on what the U. S. Supreme Court held long ago:

"An individual may be under no obligation to do a particular thing, and his failure to act creates no liability; but if he voluntarily attempts to act and do a particular thing, he comes under an implied obligation in respect to the manner in which he does it." *Guardian T&D Co. v. Fisher* 200 U. S. 57, 26 S. Ct. 186, 50 L. Ed. 367 (1906)

"Because of what appears to be lawful command on the surface, many citizens, because of their respect for what only appears to be law, are cunningly coerced into waiving their rights, due to ignorance:" *United States v. Minker*, 350 US 179, 76 S. Ct. 281, 100 L Ed. 185

Therefore, after extensive study of Pennsylvania law I have determined that you as a judicial officer and your tribunal is a court of inferior/statutory jurisdiction, and your venue jurisdiction is expressly limited to only those matters as prescribed by general rule of the Pennsylvania Supreme Court *dba* as the Pennsylvania Court Administrator. And there is not a scintilla of evidence in the public record on which to base this alleged summary jurisdiction, CITATION/SUMMONS scheme being deployed against me.

42 Pa. C. S. 1515 (b) Venue and process.--The venue of a magisterial district judge concerning matters over which jurisdiction is conferred by

subsection (a) shall be as prescribed by general rule. The process of the magisterial district judge shall extend beyond the territorial limits of the magisterial district to the extent prescribed by general rule.

Venue jurisdiction - Power of the particular court to function.

Brand v. Pennsylvania R. Company, D.C. Pa., 22 F. Supp. 569, 571. Blacks 4th p. 1728

“A judge’s allegation that he has subject matter jurisdiction is only an allegation.” *Lombard v. Elmore*, 134 Ill. App. 3d 898, 480 N. E. 2d 1329 (1st Dist. 1985)

“If the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers.” *Von Kettler et. al. v. Johnson*, 57 Ill. 109 (1870);

“Without authority, its judgments and orders are regarded as nullities, They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any court exercising authority over a subject, may be inquired into in every court, when the proceedings of the former are relied on and brought before the latter, by the party claiming the benefit of such proceedings.” *Elliott v. Piersol*, 26 U. S. 328, 1 Pet. 328, 7 L. Ed. 164 (1828) (emphasis added).

“Judge acted in the face of clearly valid statutes or case law expressly depriving him of (personal) jurisdiction would be liable.”... “In such case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for damages for resulting from his unauthorized acts.”... “Judge’s honesty of purpose and sincere belief that he was acting in discharge of his official duty was not available as defense in action.” *Dykes v. Hosemann*, 743 F. 2d. 1488 (1984). (emphasis added)

If you agree with my determinations, I make timely demand that you notify me of the actions you have taken to correct your errors.

If you disagree with my determinations I will expect you to document your position and authority with at a minimum the following documents:

1. The Pennsylvania statute clearly defining Magisterial District Judges’ as hearing officers for the Pennsylvania Department of Transportation.(see Doolan supra)
2. The Pennsylvania statute creating a class of crimes known as summary offenses
3. The general rule promulgated and published by the Pennsylvania Court Administrator activating your venue jurisdiction to authorizing you to act as an A) issuing agency and B) allowing you to proceed in a summary jurisdiction.

42 Pa. C. S. 1515 (b) Venue and process.--The venue of a magisterial district judge concerning matters over which jurisdiction is conferred by subsection (a) shall be as prescribed by general rule. The process of the magisterial district judge shall extend beyond the territorial limits of the magisterial district to the extent prescribed by general rule.

Venue jurisdiction- Power of the particular court to function.

Brand v. Pennsylvania R. Company, D.C. Pa., 22 F. Supp. 569, 571. Blacks 4th p. 1728

4. The Pennsylvania statute giving law enforcement officers and police officers authority of law to issue summary process in the form of CITATION/SUMMONS.

4.16 Pa. R. Crim. P. 402 defines persons who shall use Citations.

Rule 402. Persons who shall use Citations. Law enforcement officers shall ordinarily institute summary proceedings by citation.

Comment: It is intended that a wide variety of officials will have authority to issue citations and shall do so as provided in these rules. Such authority is, of course, limited by the extent of the enforcement power given by law to such officials. "Law enforcement officer" includes "police officer." See Rule 103

5. The promulgated and published rule or regulation from the Pennsylvania Department of Transportation naming the People of Pennsylvania travelling in their private capacity, not engaged in transportation as the subject or object of 75 Pa. C. S. 1301 (a).

"...the Act's civil and criminal penalties attach only upon violation of the regulation promulgated by the Secretary, if the Secretary were to do nothing, the Act itself would impose no penalties on anyone... The Government urges that since only those who violate these regulations may incur civil or criminal penalties, it is actual regulations issued by the Secretary of the Treasury, and not the broad authorizing language of the statute, which are to be tested against the standards of the Fourth Amendment; and that when so tested they are valid." *Calif. Bankers Assoc. v. Schultz*, 416 U. S. 21, 44

"Here the statute is not complete by itself since it merely declares the range of its operation and leaves to its progeny the means to be utilized in the effectuation of its command... Once promulgated, these regulations, called for by the statute itself, have the force of law, and violations therefore incur criminal prosecutions, just as if all the details had been incorporated into the congressional language. The result is that neither the statute nor the regulation is complete without the other, and only together do they have any force. On effect, therefore, the construction of one necessarily involves the construction of the other." *United States v. Mersky*, 361 U. S. 431, 437-38 (1960)

“Although the relevant statute authorized the Secretary to impose such a duty, his implementing regulations did not do so. Therefore we held that there was no duty to disclose...” *United States v. Murphy*, 809 F. 2d. 142, 1431

6. The Pennsylvania statute enabling law enforcement officers to initiate and conduct a prosecution of any matter in the name of the Commonwealth of Pennsylvania.

16 P. S. Section 1402 (a) “[t]he district attorney shall . . . conduct in court all criminal and other prosecutions, in the name of the Commonwealth . . . which arise in the county for which he is elected . . .”

42 Pa. C. S. A. Sec. 2524 Any person who within this Commonwealth shall practice law, or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer attorney at law attorney, and counselor at law, counselor, or the equivalent in any language, in such manner as to convey the impression... commits a misdemeanor of the third degree.

“It has been the law for the better part of two centuries, for example, that a corporation may appear in federal courts only through licensed counsel. As the courts have recognized, the rationale for the rule applies equally to all artificial entities.” *Rowland v. California Men’s Colony*, 506 US 194, 201-202 (1993)

It is well settled that, with a few exceptions not applicable here, non-attorneys may not represent parties before the Pennsylvania courts *Shortz v. Farrell*, 327 Pa. 81, 193 and most administrative agencies. A. 20 (1937); *Nolan v. Department of Public Welfare*, 673 A.2d 414 (Pa.Cmwlt.1995), petition for allowance of appeal denied, 546 Pa. 650, 683 A.2d 887 (1996); *McCain v. Curione*, 106 Pa.Cmwlt. 552, 527 A.2d 591 (1987). As the instant matter is the Ministries' appeal of the denial of its application, it may not be represented by its pastor, a non-attorney, in this appeal in this Court. See *Smaha v. Landy*, 162 Pa.Cmwlt. 136, 638 A.2d 392, petition for allowance of appeal denied, 539 Pa. 660, 651 A.2d 546 (1994) (A non-profit medical corporation must have counsel in order to proceed in a court action as a corporation cannot represent itself.); *Walacavage v. Excell 2000, Inc.*, 331 Pa.Super. 137, 480 A.2d 281 (1984) (A corporation may not appear in court and be represented by a corporate officer and shareholder who is not an attorney.)

7. Any documentation you can provide that relieves you from the responsibility of following the Pennsylvania Rules of Professional Conduct in the instant matter.

Rule 8.4 (a)-(c)

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or to do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, (or)

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation...

My authority for making this demand for verification of your authority to proceed against me has been well established by the United States Supreme Court as follows:

"The Government may carry on its operations through conventional executive agencies or through corporate forms especially created for defined ends. *Keifer & Keifer v. Reconstruction Finance Corp.*, 306 US 381,390, 318 "Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here the agent himself may have been unaware of the limitations upon his authority." *Utah Power and Light Co. v. United States*, 243 US 389, 409, 391; *United States v. Stewart*, 311 US 60,70

I will expect your response as to my demand for the correction of your error or the documents requested above within 30 days of your receiving this letter. If you need additional time, please make your request in writing and it will be granted.

Ms Nicholson if you have jurisdiction of the subject matter now is your chance to speak. Silence does not only activate estoppel but could also be construed as a violation of the Pennsylvania Rules of Professional Conduct. If I do not hear from you, within the time frame your lack of response will be your tacit admission that you do not have the documentation or the authority to support your claim of jurisdiction of the subject matter or the person of the party.

"Silence activates estoppel." *Carmine v. Bowen*, 64 A. 932 (1906)

"Silence can only be equated with fraud where there is a legal or moral duty to speak, or where an inquiry left unanswered would be intentionally misleading. . . *U. S. v. Tweel*, 550 F. 2d 297, 299

“When circumstances impose a duty to speak and one deliberately remains silent, silence is equivalent to false representation.” *Fisher Controls International, Inc. v. Gibbons*, 911 S. W. 2d 135, (1995)

“When a person sustains to another a position of trust and confidence, his failure to disclose facts that he has a duty to disclose is as much a fraud as an actual misrepresentation.” *Blanton v. Sherman Compress Co.*, 256 S. W. 2d 884, (1953)

Regards,

Scott D. Dean

cc. Zygmunt A. Pines, Pennsylvania Court Administrator
William J. Cressler, Chief Counsel
Barry J. Schoch, P. E. Pennsylvania Secretary of Transportation