

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

APPEAL OF DENIAL OF PRIVATE : NO. MD 171 - 2008  
CRIMINAL COMPLAINT OF: :  
 :  
LENORE BORISOVA :  
 :

**OPINION AND ORDER**

Before the Court is Complainant's appeal from the District Attorney's denial of her request for the filing of a private criminal complaint. The request is based upon her assertion that her nephew's father violated a custody Order in failing to return the child to her sister or herself at various times, and she seeks to have the father charged with interference with the custody of a child. The District Attorney's office has denied the request to prosecute the matter, citing policy reasons, specifically, that the office chooses to require complainants in matters such as these to pursue the civil remedies available to them, saving prosecutorial resources for other matters.

Where the District Attorney's disapproval of a private criminal complaint is based on policy considerations, the trial court must defer to the decision in the absence of bad faith, fraud or unconstitutionality. In re: Private Complaint of Adams, 764 A.2d 577 (Pa. Super. 2000). Moreover, the Courts have held that where there are civil remedies, and a private criminal complaint is simply an attempt to utilize the criminal justice system for private purposes, a District Attorney's decision to deny the request to prosecute such a matter constitutes a valid policy reason. Commonwealth v. Cooper, 710 A.2d 76 (Pa. Super. 1998).

Since Complainant has offered no evidence of bad faith, fraud or unconstitutionality,<sup>1</sup> and since the Commonwealth has offered a valid policy reason for refusing to prosecute the matter, the Court will defer to that decision.

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<sup>1</sup> In fact, the primary incident cited by Complainant was a situation where the father did not return the child following a period of partial custody because the mother was hospitalized and undergoing surgery. It appears the underlying factual situation gave rise to a legitimate custody issue.

**ORDER**

AND NOW, this 1<sup>st</sup> day of October 2008, for the foregoing reasons, the appeal of Lenore Borisova is hereby DENIED.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
Lenore Borisova, 4506 Doverbrook Drive, Champaign, IL 61822  
Gary Weber, Esq.  
Hon. Dudley N. Anderson