

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

**LOYAL ORDER OF MOOSE
LODGE 145,**

Plaintiff

vs.

**TAMMY HARRIS and
STEVEN J. COWHER,
Defendants**

:
:
:
:
:
:
:
:
:
:

NO. 17-1506

CIVIL ACTION - LAW

ORDER

AND NOW, this 20th day of **February, 2020**, upon consideration of Plaintiff's Motion for Contempt and Sanctions filed on September 11, 2019 and Defendant, Tammy Harris' Motion to Stay Proceedings and Remove Matter to Deferred Status filed on November 1, 2019, it is hereby Ordered that:

1. Plaintiff's Motion for Contempt and Sanctions is hereby GRANTED in part and DENIED in part. During oral argument held on October 18, 2019, the parties agreed that Defendant, Tammy Harris, has provided sufficient discovery responses with the following exceptions:

a. Any and all bank statements for June 21, 2017 through July 20, 2017; and

b. Readable, hard copies of State and Federal tax returns for the years 2015, 2016, and 2017.

Defendant, Tammy Harris, shall provide readable, hard copies of the above-enumerated documents within thirty (30) days of the date of this Order. Failure to comply with this Order will result in a \$2,000.00 sanction issued against Defendant, Tammy Harris, payable to the Plaintiff. The sanction shall automatically become due on the 31st day after the date of this Order and must

be paid within forty (40) days of the date of this Order. If Plaintiff has to file a Motion to Enforce this sanction, the Court will consider additional sanctions against Defendant, Tammy Harris.

2. Defendant's Motion to Stay Proceedings and Remove Matter to Deferred Status is hereby DENIED.

The decision to stay a proceeding "calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." *Texaco, Inc. v. Borda*, 383 F.2d 607, 608 (3d Cir. 1978), *citing Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936).

Defendant, Tammy Harris, seeks to stay Plaintiff's civil proceedings against her until the statute of limitations runs on all potential criminal charges, which could be up to ten (10) years, according to Defendant. Defendant bases this request on her Constitutional right against self-incrimination. It is the Court's understanding, however, that no criminal charges have been filed, that it is unclear whether any charges are forthcoming, and that no self-incrimination issues have yet arose.

Delaying a proceeding for up to ten (10) years is unfairly prejudicial to Plaintiff. The ability to preserve witness' recollections and physical evidence is significantly impaired if all proceedings are stayed. Further, there are no indications that the civil case was brought for the purpose of building a criminal case against the Defendant, Tammy Harris. To the contrary, the Plaintiff has averred a case that has survived the pleading stage. Defendant Harris continues to have the option to invoke her Fifth Amendment privilege and thus, on the contrary, is not prejudiced.

While Defendant Harris is not entitled to a stay, she retains the privilege to decline to answer questions that may elicit self-incriminating testimony. The Court will instruct the jury appropriately at the time of trial regarding any adverse inferences against the Defendant should this occur.¹ The parties will have the opportunity to argue what the appropriate jury instruction shall be based upon the specific facts concerning the Defendant's invocation of her Fifth Amendment privilege.²

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

Cc: Austin White, Esq.
Gary L. Weber, Esq.
Christian A. Lovecchio, Esq.

Andrew L. Riemenschneider, Esq.
1515 Market Street, Suite 1200
Philadelphia, PA 19102

¹ “[T]he Fifth Amendment ‘does not forbid adverse inferences against parties to civil actions where they refuse to testify in response to probative evidence offered against them: the Amendment ‘does not preclude the inference where the privilege is claimed by a party to a civil cause.’” *Caloric Corp. v. Com., Unemployment Comp. Bd. Of Review*, 452 A.2d 907, 909-910 (Pa.Cmwlt. 1982), citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). However, the inference only speaks to the credibility of the evidence introduced by the party who has the burden of proof and is not substantial evidence. *Id.* at 912.

² See Pennsylvania Suggested Standard Jury Instruction 5.51 ADVERSE INFERENCE FROM PARTY'S ASSERTION OF FIFTH AMENDMENT PRIVILEGE, Pa. SSJI (CIV), 5.51.