IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-817-2026
	:	
vs.	:	CRIMINAL DIVISION
	:	
TIMOTHY REITZ	:	OMNIBUS PRETRIAL MOTION
Defendant.	:	

OPINION AND ORDER ON DEFENDANT'S OMNIBUS MOTION SEEKING A WRIT OF HABEAS CORPUS

BACKGROUND:

The matter captioned above came before the Court on October 30, for an evidentiary hearing on Defendant's Omnibus Motion Seeking Habeas Corpus Relief, filed August 26, 2026. No testimony was introduced, and the parties relied upon the face of the Affidavit of Probable Cause filed with the Complaint (hereinafter the "Affidavit").

The gravamen of the Motion is the assertion of Timothy Reitz (hereinafter "Defendant") that the actions alleged in the Affidavit do not support the charge list at Count 1 of the information, Official Oppression, in violation of 18 P.S. Section 5301(1). The Offense Charge:

18 P.S. Section 5301, provides as follows:

> A person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity commits a misdemeanor of the second degree if, knowing that his conduct is illegal, he:
> (1) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or
> (2) denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity.

The Facts Alleged in the Affidavit:

The Affidavit alleges that Defendant was the Court appointed attorney for the alleged victim, and that the Defendant took advantage of that Court appointed relationship to engage in sexual intercourse with the alleged victim. The Court takes judicial notice of the fact that the Defendant was appointed by former President Judge Nancy L. Butts to

represent the alleged victim, by Order dated March 6, 2025, filed March 7, 2024, entered to Lycoming County docket number DP-5-2024.

QUESTION PRESENTED:

> WHETHER A JURY COULD REASONABLY FIND THAT AN ATTORNEY APPOINTED BY THE COURT TO REPRESENT AN INDIVIDUAL IN A PENDING COURT MATTER IS "A PERSON ACTING IN AN OFFICAL CAPACITY" FOR PURPOSES OF 18 P.S. SECTION 5301.

ANSWER TO QUESTION PRESENTED:

> A JURY COULD REASONABLY FIND THAT AN ATTORNEY APPOINTED BY THE COURT TO REPRESENT AN INDIVIDUAL IN A PENDING COURT MATTER IS "A PERSON ACTING IN AN OFFICAL CAPACITY" FOR PURPOSES OF 18 P.S. SECTION 5301.

DISCUSSION:

The Suggested Standard Criminal Jury Instruction for 18 P.S. Section 5301 is as follows:

> The defendant has been charged with official oppression. To find the defendant guilty of this offense, you must find that each of the following three elements has been proven beyond a reasonable doubt:
>
> *First,* that the defendant subjected *[name of victim]* to unlawful mistreatment
>
> *Second,* that the defendant was acting in an official capacity [as *[title of position]*] [taking advantage of [an official] [a purported official] capacity [as *[title of position]*]]; and
>
> *Third,* that the defendant knew that his conduct was illegal.

Presumably, the Commonwealth contends that the alleged instances of sexual intercourse between the Defendant and the alleged victim constitute "mistreatment" under Section 5301. In the matter of *Commonwealth v. Checca,* 341 Pa.Super. 480, 497, 491 A.2d 1358, 1366 (Pa.Super. 1985), our Superior Court observed as follows:

> We find that under circumstances where a public official, under color of his office, solicits or accepts a sexual favor in the course of discharging a duty of his office, the assent of the victim is not a defense to a charge of official oppression. *See e.g., Commonwealth v. Froelich,* 458 Pa. 104, 326 A.2d 364 (1974).

The Court does not believe that a privately retained attorney performing services on behalf of a client is likely to be found to be a person "acting in an official capacity." Thus, the inquiry here is the effect of a Court appointment, where a party to a pending action is entitled to the assistance of counsel, but cannot afford counsel.

The Commonwealth does not argue that the Defendant is a "public official" as that phrase is generally understood. The Commonwealth contends, however, that the reach of 18 P.S. Section 5301 is broader than only pubic officials.

In the matter of *Commonwealth v. Russ,* 349 Pa.Super. 445, 447, 503 A.2d 450, 451 (Pa.Super. 1986), our Superior Court concluded that

> Performance of the crime of official oppression is not limited to persons commonly thought of as public officials. The evil that the law seeks to prevent is the unlawful abuse of official authority. *See Commonwealth v. Checca,* 341 Pa.Super. 480, 491 A.2d 1358 (1985); *See also Commonwealth v. Stumpo,* 306 Pa.Super. 447, 456, 452 A.2d 809, 814 (1982) ("there is no requirement that the forbidden acts be those which only an official can perform"). It applies to any "person acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity." 18 Pa.Cons.Stat.Ann. Sec. 5301 (Purdon 1983).

The Court concludes that the question of whether the Defendant was "acting in an official capacity" and whether he subjected the alleged victim to mistreatment in the course of that representation, are both questions of fact for the jury.

ORDER

AND NOW, this 16th day of November, 2026, for the reasons more fully set forth above, the Defendant's Omnibus Motion Seeking Habeas Corpus Relief, filed August 26, 2026, is denied.

BY THE COURT,

William P. Carlucci, Judge

cc: Court Administrator
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