

**[J-9-2007]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

IN RE: ADMINISTRATIVE ORDER NO.	:	No. 33 MAP 2006
1-MD-2003	:	
	:	
	:	Appeal from the Order of the
APPEAL OF: HONORABLE JAMES P.	:	Commonwealth Court of Pennsylvania
TROUTMAN, CLERK OF COURTS OF	:	entered September 13, 2005, at No. 902
THE COURT OF COMMON PLEAS OF	:	CD 2004, affirming the Order of the Court
BERKS COUNTY	:	of Common Pleas of Berks County, dated
	:	March 30, 2004, at No. 1-MD-2003.
	:	
	:	882 A.2d 1049 (Pa.Cmwltth. 2005)
	:	
	:	ARGUED: March 6, 2007
	:	
	:	
THE HONORABLE JAMES P.	:	No. 181 MM 2005
TROUTMAN, CLERK OF COURTS OF	:	
BERKS COUNTY,	:	
	:	Application For Leave to File Original
Petitioner	:	Process and Petition for Writ of Prohibition
	:	
v.	:	
	:	
	:	
COURT OF COMMON PLEAS OF	:	
BERKS COUNTY,	:	
	:	
Respondent.	:	

**CONCURRING OPINION**

**MR. JUSTICE CASTILLE**

**DECIDED: November 20, 2007**

I join the Majority Opinion with respect to the jurisdictional question. I write separately to address appellant's standing. Contrary to the alternative holding of the courts below, I believe that appellant had standing to bring this action in those courts; his claim fails, in my judgment, only because his legal position is frivolous. Thus, although I join the denial of relief, I come to that conclusion through a different analysis.

The Majority finds that the Clerk's "interest in challenging the legality of the Order [below] is the same as that of any other citizen. Thus, his interest here cannot be deemed substantial." Majority Slip Op. at 12. I respectfully disagree. My reasoning on this point largely tracks that persuasively expressed by the Honorable Mary Hannah Leavitt in her dissenting opinion in the Commonwealth Court, such that I do better merely to cite her astute analysis:

The majority does not discern any "adverse effect to Troutman, beyond that of the common citizen's interest in seeing the law followed." ... The Clerk ... , not the body politic, faces the possibility of jail time should the Clerk fail to carry out the court's directive. The Clerk's interest is substantial, direct and immediate.

The Clerk's standing, however, is founded not [only] on the threat of contempt but, rather, on the duties of his office. Only the Clerk of Courts, not the common citizen, has had the responsibility conferred upon him by the Pennsylvania Constitution to maintain court records for public access. [PA. CONST. art. 5, § 15]. The particulars of this constitutional duty are established in the Judicial Code. They are also addressed in the Pennsylvania Rules of Criminal Procedure, which direct a clerk of courts to "maintain the criminal case file for the court of common pleas" and a "list of docket entries" [Pa.R.Crim.P.] 113(A),(B). The duties conferred on the Clerk of Courts by our Constitution, by our Legislature and by our Supreme Court give him an interest in an administrative order that directs him to purge the very records he is duty bound to maintain.

In re Administrative Order No. 1-MD-2003, 882 A.2d 1049, 1053-54 (Pa. Cmwlth. 2005) (footnote omitted) (Leavitt, J., dissenting). To this I would add only that the Majority's rejection of the Clerk's standing is difficult to square with this Court's embrace of

bureaucratic standing expressed recently in Pennsylvania Gaming Control Bd. v. City Council of Philadelphia, 928 A.2d 1255, 1266 (Pa. 2007) (recognizing standing of an administrative agency to seek to enjoin local ballot measure because allowing voters to express opinion allegedly would inconvenience the agency in execution of its statutory duties).

Nevertheless, I concur in the denial of ultimate relief because I believe that the trial court panel properly assessed the merits. Indeed, I concur in the panel's assessment that the Clerk's legal challenge is "frivolous, scarcely based in the law, and wholly without merit." Trial Ct. Op., 6/7/04, 1. Moreover, many of the points cited by the Majority in explaining why the Court denies appellant standing serve better to explain why appellant's merits position fails.