

SUPREME COURT, STATE OF COLORADO  ORIGINAL PROCEEDING IN CONTEMPT, 03UPL35	
Petitioner: <b>THE PEOPLE OF THE STATE OF COLORADO</b> v.  Respondent: <b>SUZANNE SHELL</b>	
Suzanne Shell 14053 Eastonville Rd. Elbert, CO 80106 719-749-2971	Case Number: 04SA093
<b>MOTION FOR DECLARATORY JUDGEMENT PURSUANT TO C.R.C.P. 57(d) &amp; (e)</b>	

COMES NOW, the Respondent, Suzanne Shell, Pro Se, advising this court that controversy exists over certain matters of law and rights pertaining to the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT regarding my legal rights and authorities under appointment of agency by a principle pursuant to this act; therefore I seek a declaration of my rights and authorities though this **MOTION FOR DECLARATORY JUDGEMENT PURSUANT TO C.R.C.P. 57(d) & (e)** and as grounds thereof presents as follows:

1. Under the October 25, 2001 court order issued in 01SA136, Item 4(g) states, “*[Suzanne Shell] cannot represent another individual in any legal transaction or matter unless specifically allowed by Supreme Court rule or statute.*”
2. I request this court to take judicial notice of the Colorado Revised Statutes under Title 15, part 1, sections 1300-1318 also known as the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (the Act) .
3. I request this court to take judicial notice of the fact that the Act has never been interpreted or defined by any court, and therefore, I have no legitimate authority upon which to rely in interpreting the construction and language of this statute other than upon the plain language contained in the statute.

The appropriate construction of a statute is a question of law. Dunlap v. Colorado Springs Cablevision, 855 P.2d 6 (Colo. App. 1992).

4. There is an existing controversy over the interpretation and construction of UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT which gives rise to uncertainty and doubt as to my rights and authority under this Act. My position is that the Act is clear

and plain on its face, and I can invoke its authority without fear or threat of criminal or civil liability. *See attached memorandum of law in support of my position.* The UPL committee disagrees with my position, as evidenced by their motion for contempt of court against me.

A proceeding for declaratory judgment must be based upon an actual controversy. Farmers Elevator Co. v. First Nat'l Bank, 176 Colo. 168, 489 P.2d 318 (1971); Beacom v. Board of County Comm'rs, 657 P.2d 440 (Colo. 1983).

One whose rights or status may be affected by statute is entitled to have any question of construction determined provided that a substantial controversy between adverse parties of sufficient immediacy to warrant the issuance of a declaratory judgment exists. Silverstein v. Sisters of Charity, 38 Colo. App. 286, 559 P.2d 716 (1976).

---

A declaratory judgment is appropriate when it will terminate a controversy. Heron v. City & County of Denver, 159 Colo. 314, 411 P.2d 314 (1966).

5. Notwithstanding any 'facts' to which I may have stipulated under threat, any stipulation or agreement between any parties relating to any question of law is not binding as a matter of law. Only a court of competent jurisdiction, after conducting a thorough examination into the matters of law involved, can issue a ruling which is thereafter binding. This matter of law remains unresolved to my detriment.

A liberal construction of the statute and the rule rejects the proposition that a person adversely affected by a statute and seeking relief from uncertainty and insecurity with respect to his rights by reason of a statute or a rule of a board or commission must take the risk of prosecutions, fines, imprisonment, loss of property, or loss of profession in order to secure adjudication of his rights. Colorado State Bd. of Optometric Exmrs. v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

6. Consequently, until this controversy is resolved, there is no way to respond to one of the allegations contained in the contempt citation. I require an adjudication of my rights by reason of the Act to resolve the uncertainty and insecurity with respect to my rights. People ex rel. Inter-Church Temperance Movement v. Baker, 133 Colo. 398, 297 P.2d 273 (1956).

In action for declaratory judgment under this rule, the complaint must state a question which is existent and not one which is academic or nonexistent; there must be a justiciable issue or legal controversy extant, and not a mere possibility that at some future time such question may arise. Heron v. City & County of Denver, 159 Colo. 314, 411 P.2d 314 (1966).

7. I am also seeking relief from the contempt citation because of the uncertainty and questions surrounding the Act and my rights and authority under the Act. I cannot be held criminally or civilly liable for my reliance on a statute which plainly authorizes and immunizes certain acts which I may have taken, and for which I am now being held liable. It is fundamentally unfair to take any punitive action against me, or to deprive me of any right, liberty or property based on my reliance upon a statute, especially when that reliance was expressly authorized by the court order which I am now being accused of violating. Punitive action taken for this can only constitute entrapment. I request the contempt citation be dismissed in conjunction with this motion for declaratory judgement.

This rule provides for further relief based on a declaratory judgment, but unless such relief is asked in the same action wherein the declaratory judgment is sought, and in connection therewith, it can be obtained only as to damages accruing subsequent to the date of the declaratory judgment. Lane v. Page, 126 Colo. 560, 251 P.2d 1078 (1952).

The general or primary purpose of a declaratory judgments statute and rule is to provide a ready and speedy remedy, in cases of actual controversy, for determining issues and adjudicating the legal rights, duties, or status of the respective parties, before controversies with regard thereto lead to the repudiation of obligations, the invasion of rights, and the commission of wrongs. People ex rel. Inter-Church Temperance Movement v. Baker, 133 Colo. 398, 297 P.2d 273 (1956); Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Primary purpose of declaratory judgment procedure is to provide a speedy, inexpensive, and readily accessible means of determining actual controversies which depend on the validity or interpretation of some written instrument of law. Toncray v. Dolan, 197 Colo. 382, 593 P.2d 956 (1979).

The purpose of the statute and the rule is to be remedial and to afford relief from uncertainty and insecurity, and the statute and rule expressly provide that they be liberally construed and administered. Colorado State Bd. of Optometric Exmrs. v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

**I hereby request that following questions must be resolved:**

1. With regard to the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (the Act) C.R.S. 15-1-1300 through 1318:
  - a. In section 15-1-1305, ***Construction of power relating to real property transactions***, is the agent required to hire a real estate professional or lawyer to perform any act expressly authorized in this section or may the agent perform the authorized act as if she were the principle by whatever legal means she chooses?
  - b. In section 15-1-1307, ***Construction of power relating to stock and bond***

*transactions* there exists express statutory limitations and restrictions regarding certain acts which a principle may not authorize an agent to perform which are expressly separated and addressed in the subsequent section. Is the agent required to hire a stock broker or lawyer to conduct these transactions or may the agent perform the authorized acts as if she were the principle, by whatever legal means she chooses?

- c. In section 15-1-1309, ***Construction of power relating to banking and other financial institution transactions*** is the agent required to hire an accountant, CPA or attorney to preform any act expressly authorized in this section or may the agent perform the authorized act as if she were the principle by whatever legal means she chooses?
  - d. Are there any statutory limitations on the authority granted by the plain language of the Act wherein an agent may not personally perform any act expressly authorized by any section in this Act or expressly authorized in the power of attorney document as if she were the principle, but which mandates that the agent hire a qualified professional in the relevant field to perform the act?
2. Does a principle have the right to appoint any other person as agent for claims and litigation as defined in the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT C.R.S. 15-1-1300-1034 & 1313?
  3. Do the statutory words “THIS DOCUMENT GIVES YOUR AGENT THE POWER TO ACT FOR YOU, WITHOUT YOUR CONSENT, IN ANY WAY THAT YOU COULD ACT FOR YOURSELF” mean that if the principle may legally perform an act, that the agent may perform the same act without qualifications or restrictions that are not correspondingly imposed upon the principle?
  4. Part 15-1-1401, ***Restrictions on exercise of certain fiduciary powers*** lists express statutory restrictions imposed upon fiduciary agents under any part of Title 15. There are no express restrictions on powers of attorney relating to Part 13, the Act. Are there any provisions in Title 15 or the Act which allow for anyone other than the principle to limit or otherwise restrict which acts the agent may personally perform under the authority of a power of attorney under the Act? If so, what are they?
  5. Given the absence of any case law interpreting the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT, as an agent appointed by a principle for claims and litigation pursuant to 15-1-1304 & 1313, do I, as an agent or a principle, have the right to rely on the plain language of the statute to guide my conduct without fear or jeopardy of civil or criminal liability?
  6. The language of the Act and of the subject power of attorney authorizes the agent, *inter alia*, to:
    - a. ***Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney.***
      - i. Is there any express or implied instruction in this or any other section of this Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?

- b. ***Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant.***
  - i. Does this section mandate that an agent hire an attorney, accountant, expert witness or other assistant for any reason or may the agent perform any authorized act without hiring an attorney, accountant, expert witness, or other assistant?
- c. ***Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation.***
  - i. Is there any express or implied instruction in this or any other section of this Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?
  - ii. Is there any express or implied limitation in this or any other section of the Act which restricts which documents the agent may personally ***prepare, execute or file*** in the name place and stead of the principle?
- d. ***Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief.***
  - i. Is there any express or implied instruction in this or any other section of this Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?
- e. ***Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae.***
  - i. Is there any express or implied instruction in this or any other section of the Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?
- f. ***In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation.***
  - i. Is there any express or implied instruction in this or any other section of this Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?
- g. ***Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and***

*printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation.*

- i. Is there any express or implied instruction in this or any other section of this Act which mandates the agent hire an attorney or other professional to perform these acts or may the agent, by virtue of the language of the Act, perform these actions as if she were the principle?
7. If this court determines that an agent may personally perform any act expressly authorized in one part of the Act but may not personally perform an act expressly authorized in another part of the Act, what is the legal authority for applying different construction to different parts of the Act?

**RELIEF**

WHEREFORE I respectfully request this court to issue a declaration of my rights and authorities under the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT pursuant to the questions submitted above, and

I respectfully request this court to dismiss the contempt citation which gave rise to this motion and request for declaratory judgement due to legal uncertainty, insecurity and controversy surrounding the meaning, intent and authority of the UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT; which has resulted in punitive action against me for relying on the plain language of the act; which action is based on entrapment and is fundamentally unfair.

Respectfully submitted May 29, 2004

Suzanne Shell

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached document **MOTION FOR DECLARATORY JUDGEMENT PURSUANT TO C.R.C.P. 57(d) & (e)** was placed in the U.S. mail, postage prepaid on May 29, 2004 to the following parties:

James C. Coyle  
Assistant Regulation Counsel  
Attorney for Petitioner  
600 17<sup>th</sup> Street, Suite 200 South  
Denver, CO 80202

---

Suzanne Shell - May 29, 2004  
14053 Eastonville Rd.  
Elbert, CO 80106  
719-71-49-2971