

No. _____

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

At Charleston

**STATE OF WEST VIRGINIA ex rel.
DARRELL V. McGRAW, JR.,
Attorney General,**

Petitioner

v.

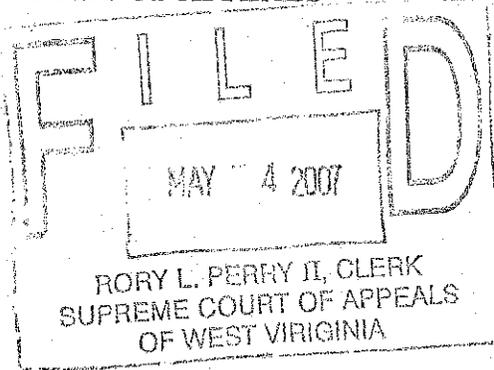
**THE HONORABLE JAY M. HOKE,
JUDGE, TWENTY-FIFTH JUDICIAL CIRCUIT,**

Respondent.

**FROM THE CIRCUIT COURT OF LINCOLN COUNTY,
WEST VIRGINIA, CIVIL ACTION NOS. 05-C-71, 05-C-72**

PETITION FOR WRIT OF MANDAMUS

Petitioner, the State of West Virginia, by and through its Attorney General, Darrell V. McGraw, Jr., by counsel Charli Fulton, Senior Assistant Attorney General, pursuant to Rule 14, West Virginia Rules of Appellate Procedure, requests that this Court issue a writ of mandamus, directed to the respondent, directing the respondent to show cause, if any there be, why this Court should not enter an order directing the respondent to enter a final order in two actions currently pending before the Circuit Court of Lincoln County, West Virginia, *i.e. State ex rel. McGraw v. Capital One Bank*, Civil Action No. 05-C-71 and *State ex rel. McGraw v. Capital One Services, Inc.*,



Civil Action No. 05-C-72, and further directing the respondent to assume and exercise the jurisdiction which respondent lawfully and properly has in such actions.

As grounds for the issuance of a writ of mandamus, petitioner alleges as follows:

1. In March of 2005 the Attorney General issued investigatory subpoenas to Capital One Bank and Capital One Services, Inc., pursuant to his authority under W. Va. Code § 46A-7-104 to investigate potential violations of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.* Capital One Bank and Capital One Services, Inc., refused to comply with those subpoenas.
2. On May 9, 2005, the Attorney General filed the above-described civil actions in the Circuit Court of Lincoln County, West Virginia to enforce the State's investigatory subpoenas. The court set both matters for hearing on Friday, June 10, 2005.
3. On June 8, 2005, Capital One Bank filed an action in the Circuit Court of Kanawha County styled *Capital One Bank v. McGraw*, Civil Action No. 05-C-1216. The complaint asked the Kanawha Circuit Court to enjoin the Attorney General's efforts to enforce its subpoenas, to order the Attorney General to enter into a joint stipulation in the Circuit Court of Lincoln County to seal all records, pleadings and matters in Civil Action Nos. 05-C-71 and 05-C-72 and to enjoin the Attorney General from issuing press releases or public disclosures regarding any matter relating to its litigation against Capital One Bank. The Kanawha Circuit Court set the preliminary injunction matter for hearing on Monday, June 13, the next business day after the State's hearing on its petition to enforce its subpoenas in Lincoln County.
4. Also on June 8, 2005, Capital One Bank filed various motions in the subpoena enforcement action in Lincoln County (05-C-71) and set them for hearing on June 10, 2005. These

motions included a motion to dismiss and a Motion for Expedited Ruling on Motion to Seal All Documents and Pleadings. In fact, however, no motion to seal documents and pleadings had been filed.

5. Also that same day, Capital One Services, Inc. filed a motion to dismiss the subpoena enforcement action in Lincoln County (05-C-72), alleging lack of personal jurisdiction over Capital One Services, Inc.

6. On June 10, 2005, the Circuit Court of Lincoln County heard the State's petitions to enforce its investigatory subpoenas in both cases in a single hearing.

a. At a meeting in chambers prior to the hearing, counsel for Capital One Bank and Capital One Services, Inc. orally moved to seal all documents and pleading in both matters. Respondent granted this motion but never entered an order setting forth findings or fact or conclusions of law on which to base its ruling. Thus, the State has been unable to appeal this ruling.

b. Also in chambers, respondent informed the parties that he had spoken to Judge Stuckey and had reached an agreement by which the Circuit Court of Lincoln County would decide all issues in all three cases.

7. At the hearing on June 10, the State presented testimonial and documentary evidence in support of its petition to enforce its subpoenas. Capital One Bank and Capital One Services, Inc. presented no evidence. The court directed the parties to submit proposed orders, including findings of fact and conclusions of law, by June 21, 2005.

8. On June 21, 2005, all parties submitted proposed orders. The Capital One Services order addressed only the issue of its motion to dismiss for lack of personal jurisdiction. The Capital One Bank's and the State's orders addressed all the issues and motions that had been heard on June

10. The State's proposed order contained proposed findings of fact, conclusions of law, and an order on the following issues.

- whether the Court had subject matter jurisdiction over the subpoena enforcement actions (pp. 4-12, 33),
- whether the Court had personal jurisdiction over Capital One Bank and Capital One Services (pp. 4-12, 33),
- whether venue was proper in Lincoln County (pp. 4-12, 33),
- whether consumer credit transactions are covered by the West Virginia Consumer Credit and Protection Act (pp. 4-12, 33),
- whether there was probable cause to support enforcement of the investigatory subpoenas (pp. 13-16, 33),
- whether the scope of the State's investigatory subpoena was unreasonably overbroad, burdensome, or expensive taking into account the needs of the case, the amount in controversy, the resources of the parties, and the importance of the issues (pp. 16-22, 33),
- whether the Attorney General violated W. Va. Code § 46A-7-104 by disclosing information about the State's civil actions to enforce investigatory subpoenas to the public (pp. 22-25, 34),
- whether the Maxwell Governmental Access to Financial Records Act, W. Va. Code § 31A-2A-1 *et seq.* prohibits Capital One Bank and Capital One Services from complying with the investigatory subpoenas (pp. 26-29, 34), and
- whether the Gramm-Leach-Bliley Modernization Act of 1999, 15 U.S.C. § 6801, *et seq.* prohibits Capital One Bank and Capital One Services from complying with the investigatory subpoenas (pp. 29-33, 34).

9. In the meantime, on June 13, 2005, the Circuit Court of Kanawha County heard Capital One Bank's petition for preliminary injunction in Civil Action 05-C-1216. The Court ruled from the bench that the State violated W. Va. Code § 46A-7-104 by publicly disclosing information about its Lincoln County subpoena enforcement lawsuits, Civil Action Nos. 05-C-71 and 05-C-72.

The Court ordered the State to immediately retract all public disclosures in connection with the Lincoln County suits, including press releases, pleadings, internet links or access to pleadings, and any other references to the suits on the Attorney General's website. (Order entered July 11, 2005.)

The Court also announced that it would take no further action in the case until such time as the Circuit Court of Lincoln had ruled – in effect staying the Kanawha County action until the Lincoln County cases were resolved.

10. On June 14, 2005, Capital One Bank filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction in Civil Action No. 05-C-71, alleging that the State may only seek enforcement of investigatory subpoenas in the county where the documents are to be produced. The stated filed a memorandum of law in response to the motion on July 5, 2005. The Court set the matter for hearing on August 26, 2005 but did not hear the issue at that hearing. Respondent has not ruled on this issue.

11. On July 11, 2005, the State moved the respondent to transfer the Kanawha County case, Civil Action No. 05-C-1216, to the Circuit Court of Lincoln County because it arises out of the same transaction or occurrence. Respondent set motion for hearing on September 30 but did not hear the motion that day. Respondent has never ruled on this motion.

12. On August 25, 2005, Capital One Bank, jointly with Capital One Services, Inc., moved to stay all proceedings in both Lincoln County cases due to the Attorney General's "unlawful retention of counsel." That matter was heard the following day. The Court denied this motion from the bench and granted Capital One Bank and Capital One Services a 30-day stay, in order to allow them to present a petition for writ of prohibition to the West Virginia Supreme Court of Appeals.

This Court refused the writ, and the Circuit Court of Lincoln County entered an order on September 22, 2005 denying the motion to stay proceedings.

13. On November 28, 2005, respondent conducted a status conference for the purpose of identifying all motions and outstanding rulings to be made in 05-C-71 and 05-C-72. The Court directed the parties to submit proposed procedural orders to memorialize the court's previous oral rulings on motions and also to schedule oral argument on any other pending motions. It directed the parties to submit any supplemental final briefing to the Court within twenty (20) days.

14. On December 19, 2005, the State filed a proposed procedural order and an additional brief, State's Supplemental Memorandum of law in Support of Enforcement of State's Investigatory Subpoenas, and Capital One Bank filed Capital One Bank's Supplemental Response to the Attorney General's Motion to Transfer Action. Capital One Bank filed an additional memorandum of law on January 23, 2006 and an amended proposed procedural order on March 14, 2006. No parties set any further matter for hearing.

15. Mandamus is the proper remedy to compel tribunals exercising judicial powers to act when they refuse to do so in violation of their duty. *Taylor County Court v. Holt*, 56 S.E. 205 (W. Va. 1906).

16. The State is entitled to a writ of mandamus requiring the Circuit Court of Lincoln County to rule on outstanding matters because the three elements required for issuance of a writ of mandamus exist: a clear right in the petitioner to the relief sought, legal duty on the part of the respondent to do the thing which petitioner seeks to compel, and absence of another adequate remedy. *Wheeling Barber College v. Roush*, 321 S.E.2d 694 (W. Va. 1984).

17. Rule 16.12, West Virginia Trial Court Rules provides that “a final judgment or decree shall be entered in extraordinary, declaratory judgment, and equitable proceedings within one month of submission.” The State’s petitions to enforce its investigatory subpoenas are equitable proceedings that are subject to the one-month timeline set forth in Rule 16.12.

18. Rule 1, West Virginia Rules of Civil Procedure provides, “These rules. . . shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.” The State is entitled to such a just, speedy, and inexpensive determination of its actions to enforce its investigatory subpoenas.

19. Article III, Section 17 of the West Virginia Constitution provides, “justice shall be administered without fail, denial or delay.” The State is entitled to have its case decided without fail, denial or delay.

20. There is no other adequate remedy. West Virginia Code § 46A-7-104 provides the sole mechanism by which the Attorney General may seek enforcement of the State’s investigatory subpoenas under the West Virginia Consumer Credit and Protection Act. Respondent’s failure to rule in these matters thus leaves the State with no other remedy.

21. The Court’s failure to rule on the State’s petitions is a *de facto* denial of the State’s petitions. Because there is no written order, however, the State cannot appeal: without an order containing the necessary findings of fact and conclusions of law, appeal is not possible.

22. Moreover, the scope of court inquiry in a subpoena enforcement proceeding is narrow: such proceedings are designed to be summary in nature. *U.S. v. American Target Advertising, Inc.*, 257 F3d 348, 352 (4th Cir. 2001).

WHEREFORE, there being no other adequate remedy available, the State requests that this court issue a writ of mandamus, compelling the Circuit Court of Lincoln County to enter final orders in Civil Action Nos. 05-C-71 and 05-C-72 addressing all unresolved matters in those cases, ruling on the State's motion to transfer, and granting the State other further relief as it may deem proper.

Respectfully submitted,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

By Counsel

Charli Fulton

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VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, CHARLI FULTON, SENIOR ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for the Petitioner in the foregoing styled civil action; that I am familiar with the contents of the foregoing **Petition for Writ of Mandamus**; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.

Charli Fulton

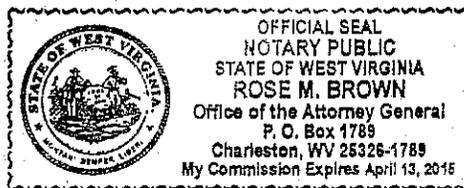
CHARLI FULTON (WV State Bar # 1314)
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection / Antitrust Divisions

Taken, subscribed, and sworn to before me in the County and State aforesaid this 4th day of May, 2007.

My commission expires April 13, 2016

Rose M. Brown

NOTARY PUBLIC



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THE HONORABLE JAY M. HOKE,
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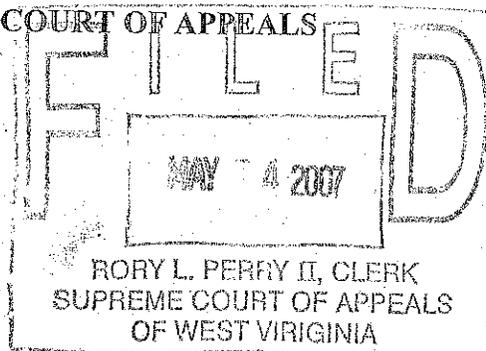
FROM THE CIRCUIT COURT OF LINCOLN COUNTY,
WEST VIRGINIA, CIVIL ACTION NOS. 05-C-71, 05-C-72

STATE'S MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS

PROCEDURAL FACTS

The State filed civil actions to enforce its investigatory subpoenas against Capital One Bank and Capital One Services in the Circuit Court of Lincoln County on May 9, 2005. Respondent set the petitions for hearing on June 10, 2005.

Two days before that hearing, Capital One Bank sued the Attorney General in the Circuit Court of Kanawha County. This suit was based solely on occurrences in connection with the State's actions to enforce its investigatory subpoenas in Lincoln County – that is, issues that would properly



have been raised as defenses in the Lincoln County cases. The State moved to dismiss the case on that basis. The Kanawha Circuit Court set Capital One Bank's request for preliminary injunction to be heard on June 13, 2005 – the next business day after the Lincoln County hearing.

On June 10, 2005, respondent heard the State's petitions to enforce its subpoenas and various other motions raised by Capital One Bank and Capital One Services. At the conclusion of the hearing, respondent directed the parties to prepare proposed orders by June 21, 2005 addressing all matters that were heard. The State and Capital One Bank both submitted proposed orders addressing all such issues on that date; Capital One Services submitted a proposed order addressing only its motion to dismiss. The Court has never ruled. The State still awaits an order either granting or denying enforcement of its investigatory subpoenas.

At a meeting in chambers before the June 10 hearing, respondent informed the parties that he had discussed the State's subpoena enforcement cases and Capital One's Kanawha County case with Judge Stucky, the judge to which that case was assigned, and they had reached an agreement that respondent would make the rulings in all three cases. Despite this agreement, the Circuit Court of Kanawha County held the previously-scheduled preliminary injunction hearing on June 13, 2005. At that hearing, the Kanawha Circuit Court ordered the State to retract all public disclosures it had made in connection with the subpoena enforcement cases that were pending in Lincoln County. The Court also announced that it would leave all further issues for decision by the Court in Lincoln County. On July 11, 2005, the State moved respondent to transfer the pending Kanawha Circuit case to Lincoln County. Respondent has not ruled on this motion.

ARGUMENT

It is well-settled that mandamus is a proper remedy to compel tribunals and officers exercising discretionary and judicial powers to act, when they refuse to do so, in violation of their duty. *State ex rel. Buxton v. O'Brien*, 125 S.E. 154 (W. Va. 1924). This Court has original jurisdiction to grant such relief. West Virginia Constitution, Article VIII, Section 3; W. Va. Code § 51-1-3; *State ex rel. Allman v. MacQueen*, 551 S.E.2d 369 (W. Va. 2001). A writ of mandamus will not issue unless three elements coexist; (1) existence of a clear legal right to the relief sought, (2) existence of a legal duty on the part of the respondent to the thing which petitioner seeks to compel, and (3) absence of another adequate remedy at law. *Hall v. Protan*, 195 S.E.2d 380 (1973), *Wheeling Barber College v. Roush*, 321 S.E.2d 694 (W. Va. 1984).

A. The State has a clear legal right to a ruling on its petition to enforce its investigatory subpoenas and on its motion to transfer.

Obviously, the State is entitled to have its pending cases ruled upon by the Court. In fact, the State should have received such rulings long ago. The West Virginia Constitution provides, "justice shall be administered without fail, denial or delay." W. Va. Const., Article III Section 17. The West Virginia Trial Court Rules, promulgated by this Court, establish time standards for cases pending in the circuit court of West Virginia. Rule 16.01, W.V.T.C.R., titled "Purpose", provides that this Court has determined that "the expeditious processing and timely disposition by cases by circuit court are essential to the proper administration of justice." Rule 16.01, W.V.T.C.R. Accordingly, the rule directs the circuit courts and their offices to comply with the rule providing

time standards for the processing of all cases. Rule 16.01, W.V.T.C.R.¹ Rule 16.01 also quotes the following provisions in support of the rule: "A judge shall dispose of all judicial matters promptly, efficiently, and fairly." Cannon 3-(8), Code of Judicial Conduct. "The court, not the lawyers or litigants, should control the pace of litigation." Section 2.50, American Bar Association Standards Relating to Court Delay Reduction.

Rule 16.05 provides time standards for civil cases. The general rule is that final judgment will be entered in such cases within 18 months of filing the complaint. However, the rule does not apply to extraordinary writs, appeals, declaratory judgments, or equity proceedings. Rule 16.05 (a). Rather, under Rule 16.12, a final judgment or decree shall be entered in such matters within one month of submission.

The State's civil actions seeking to enforce its investigatory subpoenas are equitable proceedings because they seek mandatory injunctions requiring Capital One Bank and Capital One Services, Inc. to take specific action – that is, to provide the State documents and other information to which it is entitled under W. Va. Code § 46A-7-104. Therefore, the State's actions fall under Rule 16.12, W.V.T.C.R. the rule that is applicable to extraordinary, declaratory judgment, and equitable proceedings. Under the time standards set forth in that rule, the State of West Virginia was entitled to a ruling on its petitions to enforce its investigatory subpoenas within one month of the June 10, 2005 hearing at which the matter was submitted. Moreover, as of June 21, 2005 respondent had detailed proposed orders from all parties from which he could have drafted the Court's order.

¹The rule provides an exception for cases governed by statute or cases in which the circuit court finds, on the record, that extraordinary circumstances exist for exemption from the standards. Rule 16.1 W.V.T.C.R. These exceptions are not applicable here. There is no statutory provision that governs, nor has circuit court found on the record that any extraordinary circumstances exist.

Finally, the Court should note that subpoena enforcement proceedings are designed to be summary in nature. *U. S. v. American Target Advertising, Inc.*, 257 F.3d 348, 353 (4th Cir. 2001), citing *U.S. v. Sturm, Ruger & Co., Inc.*, 84 F.3d 1, 5 (1st Cir. 1996). In *American Target*, the U. S. Postal Service issued an investigatory subpoena for documents and records of three companies involved in direct marketing through the mails. The business refused to provide the documents, the Postal Service sued, and the district court ordered the business to provide the documents. On appeal, the Fourth Circuit affirmed the district court's ruling in an opinion that discussed the underlying nature of investigatory subpoenas.

The Court first noted that the district court's role in enforcing administrative subpoenas is "sharply limited." *American Target*, 257 F.3d at 351, citing *EEOC v. Lockheed Martin Corp. Aero & Naval Systems*, 116 F.3d 110, 113 (4th Cir. 1997). In granting the government's petition for enforcement, the court below need only have determined that (1) the Postal Inspection service was authorized to undertake such an investigation, (2) the applicable requirements of due process were met, and (3) the material requested were relevant. *Id.*, citing *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186 (1946). So long as the agency's assertion of authority is not "obviously apocryphal," the requirement of authorization is met. *American Target*, 257 F.3d at 354. The burden of demonstrating any abuse of process is on the party challenging the investigation. *American Target*, 257 F.3d at 354, citing *U.S. v. Powell*, 379 U.S. 48 (1964). The Fourth Circuit explained as follows:

As a collateral effect of this legislative grant of discretion, targets of agency investigations are constrained to endure the trouble and expense of compliance, along with certain compromises of their privacy attendant to the disclosure of proprietary information to third parties. If the investigation ultimately uncovers no wrongdoing, the subject may, with some justification believe itself unfairly victimized or otherwise violated. The inevitability of these sorts of unfortunate

outcomes, however is trumped by "the overriding public interest in ensuring the expeditious investigation of possible unlawful activity." *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C.Cir. 1977).

American Target, 257 F.3d at 353-354.

West Virginia law on enforcement of administrative/investigatory subpoenas does not vary from the standard set forth in *American Target*.

In order to obtain judicial backing for the enforcement of an administrative subpoena, the agency must prove that (1) the subpoena is issued for a legislatively authorized purpose, (2) the information sought is relevant to the authorized purpose, (3) the information sought is not already within the agency's possession, (4) the information sought is adequately described, and (5) proper procedures were used in issuing the subpoena. If these requirements are satisfied, the subpoena is presumably valid and the burden shifts to those opposing the subpoena to demonstrate its invalidity. The party seeking to quash the subpoena must disprove through facts and evidence the presumed relevance and purpose of the subpoena.

Hoover, 483 S.E.2d at 18, citing *Powell, supra*; *United States v. Morton Salt Co.*, 338 U.S. 631 (1950); *Oklahoma Press, supra*; *West Virginia Human Rights Commission v. Moore*, 411 S.E.2d 702 (W. Va. 1980) (adopting the federal standards to determine the enforceability of a subpoena). See also, *State ex rel. Palumbo v. Graley's Body Shop, Inc.*, 425 S.E.2d 177 (W. Va. 1992). Thus, the petitions to enforce should have been decided summarily.

B. The Circuit Court of Lincoln County has a clear legal duty to enter an order ruling on the State's petitions to enforce its subpoenas.

As discussed in argument section A, *supra* the State of West Virginia has clear legal right to a ruling on its petitions to enforce its subpoenas. This right is coextensive with the circuit court's duty to provide such a ruling in a written order.

C. The State has no other adequate remedy.

The West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*, creates a consumer protection division under the authority of the Attorney General. W. Va. Code § 46A-7-101. The Attorney General is statutorily charged as an administrator of the West Virginia Consumer Credit and Protection Act and appears in civil proceedings on his own motion as the agent and legal representative of the state and the citizens. *Manchin v. Browning*, 296 S.E.2d 909 (W. Va., 1982). Legal authority for such actions is set forth in W. Va. Code §§ 46A-7-102 to 46A-7-111.

The Attorney General's investigatory powers -- including the right to issue subpoenas for information and documents -- is set forth in W. Va. Code § 46A-7-104. That statute provides the sole mechanism by which the state may enforce its investigatory subpoenas under the West Virginia Consumer Credit and Protection Act. Specifically, when a person fails to obey a subpoena without lawful excuse, the attorney general may apply to the circuit court for an order compelling compliance. W. Va. Code § 46A-7-104 (3). Thus, there is no other legal action that the state can take to compel compliance with its investigatory subpoenas.

The court's failure to rule on the state's petitions is a *de facto* denial of the state's petitions to enforce its subpoenas. Moreover, it is a denial from which the state cannot appeal: in the absence of an order containing sufficient findings of fact and conclusions of law an appeal is not possible.

Not only there is no adequate legal remedy in this case, but the court's refusal to rule also undermines the State's ability to issue and to enforce its subpoenas in connection with all of its investigations under the West Virginia Consumer Credit and Protection Act. The defenses raised by Capital One Bank and Capital One Services, Inc. include a number of issues that can and do arise

in other subpoena enforcement actions. Specifically, the following recurring issues remain to be resolved in the instant case:

- whether the Court had subject matter jurisdiction over the subpoena enforcement actions (pp. 4-12, 33),
- whether the Court had personal jurisdiction over Capital One Bank And Capital One Services (pp. 4-12, 33),
- whether venue was proper in Lincoln County (pp. 4-12, 33),
- whether consumer credit transactions are covered by the West Virginia Consumer Credit and Protection Act (pp. 4- 12, 33),
- whether there was probable cause to support enforcement of the investigatory subpoenas (pp. 13-16, 33),
- whether the scope of the State's investigatory subpoena was unreasonably overbroad, burdensome, or expensive taking into account the needs of the case, the amount in controversy, the resources of the parties, and the importance of the issues (pp. 16-22, 33),
- whether the Attorney General violated W. Va. Code § 46A-7-104 by disclosing information about the State's civil actions to enforce investigatory subpoenas to the public (pp. 22-25, 34),
- whether the Maxwell Governmental Access to Financial Records Act, W. Va. Code § 31A-2A-1 *et seq.* prohibits Capital One Bank and Capital One Services from complying with the investigatory subpoenas (pp. 26-29, 34),
- whether the Gramm-Leach-Bliley Modernization Act of 1999, 15 U.S.C. § 6801, *et seq.* prohibits Capital One Bank and Capital One Services from complying with the investigatory subpoenas (pp. 29-33, 34),
- whether, in the absence of an administrative hearing, the Attorney General is required to seeking enforcement of investigatory subpoenas in the county where the documents are to be delivered, and
- whether the Circuit Court of Lincoln County is required to order the case pending in Kanawha County, Civil Action No. 05-C-1216, to be transferred to it under Rule 42(b), W.V.R.C.P.

Consequently, the court's refusal to rule on the State's petitions affects not only this case but all of its other subpoena enforcement activities. There is, therefore, no adequate remedy for the state but to obtain a ruling from the Circuit Court of Lincoln County.

CONCLUSION

For the reasons stated above, this court should issue a rule to show cause and thereafter issue a writ of mandamus requiring the Circuit Court of Lincoln County to assume and exercise jurisdiction and to enter an order or orders ruling on the state's petitions to enforce investigatory subpoenas and the State's motion to transfer the Kanawha Circuit case arising out of the same occurrences.

Respectfully submitted,

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

By Counsel

Charli Fulton

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