

STATE OF CONNECTICUT



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STATEWIDE GRIEVANCE COMMITTEE

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01/11/2011

OFFICE OF CHIEF DISCIPLINARY C
100 WASHINGTON STREET
HARTFORD CT 06106

PAUL J GARLASCO
PAUL J. GARLASCO
83 PARK LANE
NEW MILFORD CT 06776

RE: GRIEVANCE COMPLAINT #09-0911
VONREYN vs. GARLASCO

Dear Respondent and Disciplinary Counsel:

Enclosed herewith is the decision of the reviewing committee of the Statewide Grievance Committee concerning the above referenced matter. In accordance with the Practice Book Sections 2-35, 2-36 and 2-38(a), the Respondent may, within thirty (30) days of the date of this notice, submit to the Statewide Grievance Committee a request for review of the decision.

A request for review must be sent to the Statewide Grievance Committee at the address listed above.

Sincerely,

Michael P. Bowler

Encl.

cc: Attorney Gail S. Kotowski
Attorney Raymond J. Plouffe
Robin Vonreyn

STATEWIDE GRIEVANCE COMMITTEE

Robin Von Reyn
Complainant

vs.

Grievance Complaint #09-0911

Paul Garlasco
Respondent

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted a hearing at the Superior Court, 80 Washington Street, Hartford, Connecticut on October 7, 2010. The hearing addressed the record of the complaint filed on October 15, 2009, and the probable cause determination filed by the Litchfield Judicial District Grievance Panel on January 14, 2010, finding that there existed probable cause that the Respondent violated Rules 4.1, 4.3, 4.4, and 8.4(3) and (4) of the Rules of Professional Conduct.

Notice of the hearing was mailed to the Complainant, to the Office of the Chief Disciplinary Counsel, and to the Respondent on August 31, 2010. Pursuant to Practice Book §2-35(d), Chief Disciplinary Counsel Mark A. Dubois pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent appeared at the hearing and testified. The Respondent was represented by Attorney Raymond Plouffe. The reviewing committee also heard testimony from Attorney Fred L. Baker.

This reviewing committee finds the following facts by clear and convincing evidence:

The Respondent is in a long-running civil and political dispute with the town of Bridgewater ("Town") and, in particular, William Stuart, the First Selectman of Bridgewater, over a piece of property he owns. The Respondent wishes to build a home on the lot, but has been unable to get the necessary zoning and driveway permits. The Respondent was unsuccessful in challenging the Zoning Board of Appeals in civil litigation. There is still federal litigation pending between the Respondent and the Town. The Respondent is convinced the First Selectman is corrupt. The Respondent has an intense personal dislike for the First Selectman based on their interactions over the years. As part of his dispute with the Town, the Respondent discovered the Town had a "poor fund" called the Burnham Fund and that the First Selectman oversaw distributions from the fund with no oversight. The Respondent became convinced that the First Selectman was using the fund for improper purposes including paying witnesses in the Town in connection with his civil litigation.

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On or about August 28, 2008, the Respondent sent a Freedom of Information Act ("FOIA") request asking for: 1) copies of the bank statements and cancelled checks from the Burnham Fund for three years; 2) a copy of the trust document or will establishing the Burnham fund; and 3) a copy of the authorizations for all disbursements in the last three years. Upon initial request, the Town provided the Respondent with a copy of the Burnham will, and indicated it did not maintain cancelled checks or authorizations of disbursements. The Town further stated it would only provide bank statements that redacted the names of Burnham fund recipients out of concern for the privacy of those individuals. It was the Town's position that the disclosure of these names would constitute an invasion of privacy as there would be a stigma attached to receiving funds from a "poor fund."

The Respondent then filed a Freedom of Information Act ("FOIA") complaint regarding the noncompliance with his request. The complaint was docketed as Paul Garlasco v. Town of Bridgewater, Freedom of Information Commission Docket #FIC 2008-609. Although the Respondent had counsel in his pending federal lawsuit, the Respondent represented himself in the FOIA complaint. On December 1, 2008, a hearing was held regarding the complaint. On August 12, 2009, the Freedom of Information Commission ("FOIC") issued a proposed decision determining that the Town had provided the Respondent with a copy of the Burnham will, the Town did not have copies of cancelled checks or authorizations of disbursements and the Town should provide the Respondent with the requested non-redacted bank statements because they were not public records exempt from disclosure.

Upon receipt of the proposed decision, the Respondent requested the documents. Attorney Fred Baker, the town attorney, wrote to the Respondent on August 13, 2009 indicating the town was deciding whether or not to appeal the FOIC decision and would provide the documents if it did not appeal the decision. The FOIC decision was finalized on August 19, 2009. The Town did not apply for a stay and did not turn over the public records. The records were turned over on October 2, 2009 after a Board of Selectman special meeting determined the town would not appeal the decision.

On or about September 4, 2009, the Respondent read a newspaper article in which the Complainant was quoted as a recipient of funds from the Burnham Fund. She was defending her reputation after an allegation had been made that she was a "close personal friend" of Mr. Stuart, the First Selectman of the town of Bridgewater, and that she received the money improperly as a gift. The Respondent believed that the Complainant had a romantic relationship with the First Selectman. On September 4, 2009, the Respondent issued a subpoena duces tecum and notice of deposition to the Complainant demanding that she provide the following items dating back to January 1, 2003: 1) federal and state tax returns; 2) all bank statements and cancelled checks; 3) all credit card statements; 4) copies of fuel oil purchases and service bills; 5) all gifts by check or otherwise received by Complainant or a family member; 6) proof of payment of her mortgage; 7) correspondence to or from any

creditors; and 8) copies of all checks received from Mr. Stuart or the Town of Bridgewater or the Burnham Fund. The notice of deposition and subpoena duces tecum was captioned as Paul Garlasco v. Town of Bridgewater, Freedom of Information Commission Docket #FIC 2008-609. The Respondent's ability to issue a subpoena duces tecum arose from the fact that he was a commissioner of the superior court and a Connecticut licensed attorney and because he was providing himself with legal representation in the FOIA complaint. A lay person or litigant does not have the authority to issue a subpoena without approval from a governmental or judicial authority. The deposition of the Complainant was noticed for September 11, 2009.

Before issuing the notice of deposition and subpoena duces tecum, the Respondent called Attorney Tracie Brown, staff counsel for the FOIC, and made general inquiries into whether or not an attorney could issue a subpoena in an administrative proceeding and whether or not an attorney could notice the deposition of a fact witness. Attorney Brown told the Respondent that the FOIC allowed attorneys to subpoena witness to their administrative hearings. She also indicated that she did not know if he could take the deposition of a fact witness, there was nothing in the FOIC regulations or the Uniform Administrative Procedures Act to allow that type of discovery, and she did not see anything wrong with it, but he should check the Practice Book. Attorney Brown also told the Respondent that she was not allowed to give him legal advice.

On or about September 9, 2009, the Town Attorney Fred Baker received notice of the deposition and issuance of the subpoena duces tecum. On September 10, 2009, the Town Attorney called the Respondent and told him there was no legal authority to depose a witness in an administrative matter, his subpoena failed to comply with Practice Book requirements for discovery, and that there was no case pending because a final decision had been issued. On September 10, 2009, the Respondent cancelled the deposition. He went to the Complainant's house to tell her in person that the deposition was cancelled. He identified himself to the Complainant, indicated his involvement in the matter and suggested she may need independent legal counsel.

On September 11, 2009, the Town filed a Motion to Quash Subpoena with the FOIC under Paul Garlasco v. Town of Bridgewater, Freedom of Information Commission Docket #FIC 2008-609. On September 14, 2009, the Respondent filed an Objection to the Motion to Quash and indicated in the pleading that he no longer intended to depose the Complainant, but instead requested permission to depose other individuals connected to the Town. On September 17, 2009, the FOIC declined to rule on Motion to Quash and the Objection because no matter was pending.

On October 2, 2009, the Town provided the Respondent with the non-redacted bank statements it was ordered to produce. On October 5, 2009, the Respondent filed a notice of noncompliance with the FOIC claiming the Town had not provided copies of the cancelled checks. On October 14, 2009, the Respondent attempted to schedule depositions for certain

Town employees. On October 28, 2009, the Town received notice that a new FOIA complaint had been made against the Town by the Respondent for failure to provide the cancelled checks.

This reviewing committee also considered the following:

The Respondent failed to provide us with any legal authority for the right to depose an individual after an administrative matter had concluded other than a reference to the statute that authorizes commissioners of the superior court to issue subpoenas. The Respondent failed to provide an explanation for why any of the personal documents he requested from the Complainant would be likely to lead to admissible evidence other than to suggest if the Complainant had kept a copy of the cancelled check she had received from the Burnham Fund, he would have been able to subpoena copies of the cancelled checks from the bank that held the corpus of the Burnham Fund.

We conclude by clear and convincing evidence that the Respondent engaged in unethical conduct.

Rule 4.1 and 4.3:

Because the Complainant failed to testify at the hearing, there is no sworn testimony as to her meetings with the Respondent other than his explanation, which we adopted in our findings of fact.

The evidence shows that the Respondent approached the Complainant at her home and told her his name and occupation as well as his interest in issuing a subpoena duces tecum. The Respondent advised the Complainant that she might wish to seek the advice of counsel. There is no clear and convincing evidence that the Respondent made an untruthful statement to the Complainant in this interaction or implied to her that he was a disinterested party in the FOIA action. This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence that the Respondent violated Rules 4.1 or 4.3 of the Rules of Professional Conduct.

Rule 4.4:

Rule 4.4 of the Rules of Professional Conduct states: "In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or use methods of obtaining evidence that violate the legal rights of such a person."

Before looking to the merits of this case, we must first address whether or not Rule 4.4 applies to an attorney who represents himself pro se. See Pinsky v. Statewide Grievance Committee, 216 Conn. 228, 236 (1990) ("The language of Rule 4.2 and the comments thereto,

limit the restriction on communications with represented parties to those situations where the attorney is 'representing a client.' Here, the plaintiff was not 'representing a client.'"). See also Notopoulos v. Statewide Grievance Committee, 277 Conn. 218 (2006) (Rule 8.4(4) did apply to Respondent's personal conduct). "[T]he Rules of Professional Conduct apply to attorneys whether they are representing clients or acting as pro se litigants unless the language of the rule or its relevant commentary clearly suggests otherwise." Id., 277 Conn. at 231. We believe Pinsky v. Statewide Grievance Committee is distinguishable from this matter because: 1) the Respondent represented himself as an attorney in this case; and 2) the Respondent issued a subpoena by virtue of his status as a commissioner of the superior court and Connecticut licensed attorney. In Pinsky, "[the respondent attorney] did not enter his own appearance, but rather retained counsel to represent him in the summary process action." 216 Conn. at 230. Thus when Attorney Pinsky contacted another litigant, it was purely in his capacity as a litigant and not as an attorney. The Respondent cannot claim the same. The subpoena was issued and served based solely on his authority to practice law, a non-attorney could not have engaged in the same behavior. Therefore we conclude as a matter of law that a lawyer who represents himself in a dispute can violate Rule 4.4 if the actions engaged in are done not as a litigant, but as a lawyer.

The evidence shows that the Respondent represented himself in Garlasco v. Town of Bridgewater, Freedom of Information Commission Docket #FIC 2008-609. As a commissioner of the superior court and an attorney, the Respondent issued a subpoena to the Complainant demanding the following items dating back to January 1, 2003: 1) federal and state tax returns; 2) all bank statements and cancelled checks; 3) all credit card statements; 4) copies of fuel oil purchases and service bills; 5) all gifts by check or otherwise received by Complainant or a family member; 6) proof of payment of her mortgage; 7) correspondence to or from any creditors; and 8) copies of all checks received from Mr. Stuart or the Town of Bridgewater or the Burnham Fund.

The Respondent issued the subpoena despite the fact that: 1) no administrative matter or hearing was pending; 2) there was no statutory authority in the Uniform Administrative Procedures Act or the FOIA regulations to support this type of discovery; 3) the documents requested from the Complainant were not the type of documents he would be entitled to receive under the FOIA; 4) the documents were highly personal, embarrassing and invasive and the request for said documents from a non-party does not appear to be designed to lead to evidence that would be admissible in an FOIA complaint; and 5) it would be extremely burdensome for a non-party witness to find and produce five or six years worth of personal and financial tax returns, bank statements, mortgage and credit card statements, bills and cancelled checks in less than one week. That the Complainant could have hired counsel to defend her and file the appropriate pleadings does not excuse the Respondent's invasive actions. The only dispute the Respondent had with the FOIC decision was that he believed the Commission should have ordered the Town to obtain and provide him with copies of the cancelled checks from the Burnham Fund.

In this case, the evidence shows that the subpoena issued by the Respondent was issued upon his review of a newspaper article making unsubstantiated allegations that the Complainant was a close personal friend of the First Selectman. The Respondent believed the Complainant was the First Selectman's girlfriend¹. The Respondent bore great animosity towards the First Selectman based on his treatment by the Town during their long-running dispute. The Respondent then issued a subpoena against the Complainant for highly personal and embarrassing financial documents based on her disclosure that she had received some funds from the Burnham Fund. The Respondent gave the Complainant less than one week to produce six years worth of tax returns, bank statements, mortgage and credit card statements, various bills and cancelled checks. Immediately on being challenged by the town that there was no legal authority to support a subpoena and deposition, the Respondent called off the deposition, cancelled the subpoena and never pursued the issue with the Complainant again. We find clear and convincing evidence that there was no substantial purpose for the subpoena and deposition other than to embarrass and burden the Complainant.

We do not believe the Respondent's pretext for the subpoena; he claims that he thought the Complainant would have kept a copy of a cancelled check from the Burnham Fund and the cancelled check would have led him to the name of the bank that the Town used. There is no credible connection between six years of the Complainant's tax returns, bank statements, mortgage and credit card statements, various bills and all cancelled checks she had ever received and the name of the bank holding the corpus of the Burnham Fund. The subpoena was nothing more than a fishing expedition into the private financial life of a local citizen.

Accordingly, for all the above reasons, we find clear and convincing evidence that the Respondent violated Rule 4.4 of the Rules of Professional Conduct.

Rule 8.4(3):

"It is professional misconduct for a lawyer to...[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

As noted above, because the Complainant failed to testify at the hearing, there is no sworn testimony as to her meetings with the Respondent other than his explanation, which we adopted in our findings of fact.

The evidence shows that the Respondent approached the Complainant at her home and told her his name and occupation as well as his interest in issuing a subpoena duces tecum.

¹ See Objection to Respondent's Motion to Quash Subpoena, ¶3 ("Said newspaper article discloses that [the First Selectman] may have stolen the funds to gift to his girlfriend, [the Complainant]....")

The Respondent advised the Complainant that she might wish to seek the advice of counsel. There is no clear and convincing evidence that the Respondent made a misrepresentation to the Complainant. This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence that the Respondent violated Rule 8.4(3) of the Rules of Professional Conduct.

Rule 8.4(4):

“It is professional misconduct for a lawyer to...[e]ngage in conduct that is prejudicial to the administration of justice.”

“Pretrial discovery may be expressly authorized by statute, but, absent an express provision, the extent to which a party to an administrative proceeding is entitled to discovery is determined by the rules of the particular agency.” Pet v. Dep’t of Health Services, 207 Conn. 346, 357 (1988). The regulations of the FOIC indicate that only the Commission can issue subpoenas and request the production of documents, and that those subpoenas and production requests are limited to witnesses appearing at a hearing. See FOIC Regs. §1-21j-36. Practice Book §13-26 applies to civil actions, probate appeals, and administrative appeals in which the judicial authority finds it reasonably probable that evidence outside the record will be required.

The evidence shows that on August 19, 2009, a final decision was reached in Paul Garlasco v. Town of Bridgewater, Freedom of Information Commission Docket #FIC 2008-609. After the final decision was issued, on September 4, 2009, the Respondent issued a notice of deposition and subpoena duces tecum with the FOIC Docket Number to the Complainant. The Respondent did not take an appeal of the administrative decision. At the time, the Respondent did not know of any statutory, administrative or judicial authority for him to conduct this type of discovery in an administrative proceeding. The Respondent cannot claim he relied on the legal advice of Attorney Brown because he was not her client, she expressly told him that she could not provide him with legal advice, and she did not in fact provide him with a legal authority that would permit this type of discovery in an administrative proceeding. Further, even if this type of discovery were permitted in an administrative proceeding, the evidence shows that at the time the subpoena was issued, there was no case pending before the FOIC. The FOIC declined to rule on the Town’s Motion to Quash the Subpoena because there was no open matter pending before it. Therefore we find that the Respondent acted outside the rule of law in issuing this subpoena duces tecum and notice of deposition and his actions were prejudicial to the administration of justice. This reviewing committee finds clear and convincing evidence that the Respondent violated Rule 8.4(4) of the Rules of Professional Conduct.

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The Respondent has harmed the reputation of the Bar by intimidating, embarrassing and burdening a member of the public without a substantial purpose. We believe the receipt of such an intrusive subpoena would be burdensome and humiliating to any witness, especially someone who has had financial problems. Further, the Respondent acted outside of his legal authority and engaged in conduct prejudicial to the administration of justice by attempting to subpoena a witness to produce documents and attend a deposition when there was no legal authority for this type of discovery and the administrative proceeding in question had concluded.

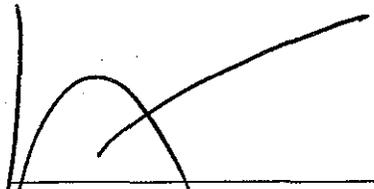
The power to issue a subpoena and order the production of documents is a powerful tool provided to attorneys in their role as an officer of the court. Attorneys must use this tool in an appropriate and responsible manner. It is clear the Respondent let his personal emotions overcome his professional judgment. Because we find the Respondent violated Rules 4.4 and 8.4(4) of the Rules of Professional Conduct, we reprimand the Respondent.

(D)
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DECISION DATE:

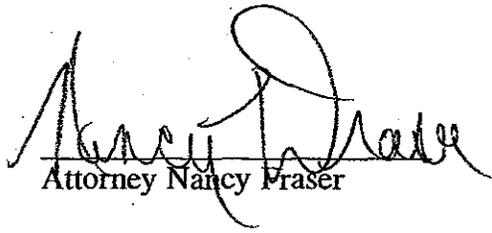
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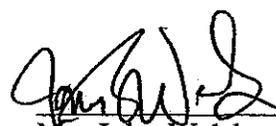
Attorney Noble Allen

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Attorney Nancy Fraser

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Mr. John Walsh