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**March 12, 2013**

Mr. Scott Cole  
State Ethics Commission  
Enforcement Division  
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Re: Brian Johnson vs. Peter Frei  
Palmer District Court, Civil Action #: 1143CV293

Dear Mr. Cole:

Further to our phone conversation of 3/7, I am enclosing copies of court documents filed today in the above in which I oppose the award of legal fees to the above plaintiff, Brian Johnson. The facts raise legitimate concerns whether Mr. Johnson has improperly received and accepted something of significant value in his capacity as a town official not otherwise available to the general public. Likewise, the facts warrant inquiry whether - and on what basis - Selectmen have used their official positions to secure unwarranted privileges of substantial value for Mr. Johnson not properly available to similarly situated individuals, arguably in violation of G.L. c. 268 § 23(b)(2)(i) and (ii).

As I believe the incident which gives rise to the payment and acceptance of attorney fees in this case is a strictly private matter between private individuals, please allow me to repeat a summary of the underlying facts. I apologize for the length.

Brian Johnson resides in and is the elected "highway surveyor" of the Town of Holland. My client, Peter Frei also lives there in a remote, lake front home. Frei has been a long term critic of town officials, for the most part alleging various forms of self-dealing, questionable land deals and general incompetence.

Frei established an interactive website/blog at which town activities are made available to the public. [www.01521.com](http://www.01521.com). The site includes everything from school lunches to senior citizen outings. It also includes a "speak out" section in which residents post their complaints and criticism of town officials and related commentary. Suffice it to say Brian Johnson and other town officials are not particularly fond of Peter Frei or his website.

The relevant incident occurred between Frei, Johnson and Johnson's friends on Sunday, 2/19/2011. A local club had sponsored a fishing derby in Holland. Johnson, several other highway employees and friends, showed up at daybreak on the ice a short distance from Mr. Frei's home. They drilled holes with power augers, fished, barbequed, drank, ran ATVs on the ice, urinated on Frei's property and essentially partied for the bulk of the day.

Frei found it telling that with the lake being 3 miles long with many more miles of available shoreline, Johnson and company "just happened" to position themselves just outside his particular home located on the tip of a remote peninsula surrounded on three sides by water. Removing any doubt about their purpose, the men kept an ATV with the words "EAT ME" painted on the plow blade facing Frei's home all day.

Frei was at home with his girlfriend. They took pictures of the goings on from the inside of the house and basically ignored Johnson and his crew. Sometime around 3 p.m. Frei noticed a few of the men walking on his land in the direction of his car. He was concerned about vandalism. His car door had been kicked in following a previous confrontation with Johnson. (No witnesses).

He decided to exit the home, intercept the men walking toward his car and tell them not to trespass on his land. His girlfriend advised against it. There was a history of hard feelings by Johnson toward Frei, the men were drunk, Frei was alone, etc. Johnson is 6'3" and weighs 275 pounds. Frei is slight in physical stature, weighing more than 100 pounds less than Johnson. Johnson had previously made false accusations to the police about Frei, etc.

Frei disregarded the advice but realizing it would be only his word against theirs if an incident or false allegations should occur, Frei arranged to record the conversation on a cell phone. He hung a microphone on the outside of his overalls, activated the record function of his cell phone, placed it in his chest pocket and went outside.

As Frei suspected, when he got onto the ice he was met with loud "get the f... out of here" insults and vulgarities. The group was loud and hostile. One man took off his jacket as if preparing to fight. Frei ignored them and calmly told the men not to trespass.

As he turned to leave Frei was kicked from behind by one of the men (not Johnson) and fell to the ice. Frei says Johnson quickly approached as if to kick him in the head while he was down. Frei shouted "you are all being video-taped" at which point Johnson and the others froze. Frei thought his girl friend was videoing the events from the house. He got up, returned to the house and called the police. Frei and his girlfriend waited and waited.

As Frei's driveway was snowed in and difficult to find, Frei's girlfriend walked to the street to await the police. She followed a land path through the snow some distance from the men who remained on the ice. As she did so, the men shouted obscenities at her, calling her "fat," a "bitch," a "cunt," telling her she "had better watch out, girl" etc. The jury heard these remarks as part of the girlfriend's trial testimony during the trial.

The police responded and separately interviewed the parties. Frei and his girlfriend described what had happened. For their part, the men denied there was any sort of altercation on the ice at all. They said they saw Frei slip and fall. (The ATV with the words "EAT ME" had conveniently disappeared before the police arrived).

As expected, Johnson accused Frei of being the aggressor, of yelling at and threatening him. According to the police report (copy attached), Johnson told the responding officers that he felt intimidated by Frei and moreover that Frei threatened to "fucking kill him" if he went onto Frei's property.

Having not observed wrong doing in their presence, the police advised the parties they would document what had been told to them but not seek criminal complaints either way. The parties were advised they were each free to apply to the court for whatever criminal complaints they thought appropriate. The police then left the scene.

Johnson appears to have been unaware he was being recorded. He did not know the tape would categorically refute his account of his confrontation with Frei on the ice. He did not know it would prove he was lying, gave materially false information to a police officer in the course of an investigation and had defamed Frei by publically accusing him of a crime, namely, threat to murder.

When Johnson later found out about Frei's recording, he sued Frei in Palmer District Court for a civil violation of the Mass. Wiretap Law. G.L. c. 272 § 99Q. As you are probably aware, this law makes it illegal to secretly record a conversation with another. It provides for statutory damages, punitive damages and an award of attorney fees to a prevailing party. The Town's decision to pay Johnson's legal fees and Johnson's acceptance thereof is the focus of this complaint.

In my mind it is important that **Johnson initiated the law suit**. He did so in his individual capacity. He was neither working at the time of the incident or doing anything on behalf of the Town or in his official capacity as highway surveyor. The complaint was filed on June 21, 2012. It was a private right of action filed relative to an incident in which the Town was not a party or otherwise involved. On what lawful basis did the Selectmen authorize payment of these fees? On what lawful basis does Johnson accept?

Conjecture on my part but the timing of the filing of Johnson's wiretap suit is significant. It suggests the Town saw what looked like a slam-dunk wire tap claim as a means to offset expenses being incurred in another matter.

Another case between Frei and Johnson was underway when the wiretap case was filed. On March 15, 2011, three weeks after the incident on the ice and fed up with Johnson's conduct, Frei sought an harassment prevention order pursuant to the provisions of G.L. c. 258E from the Palmer District Court against Johnson. Docket # 1134 RO 79. Frei was unsuccessful. The case was dismissed on August 12, 2011.

Before its dismissal, however, the harassment case became a protracted legal proceeding involving multiple court appearances, lengthy witness testimony, briefs, legal argument, etc. It lasted from March through August of 2011. Hearings were held on 4/7/11, 5/12/11; 6/9/11, 6/16/11, 6/23/11, 7/28/11 and 8/8/2011. Johnson was represented by Attorney Tani Saperstein of Springfield. Frei appeared *pro se*. Attorney Saperstein represents Johnson in the wiretap/civil rights case for which Johnson now seeks legal fees. I assume without knowing Attorney Saperstein's legal fees for the harassment case were paid for by the Town.

Whether an offset was the town's motivation or not, based on the facts, it strikes me as improper and contrary to the conflict of interest law for the Town to have authorized payment of legal fees in the wiretap/civil rights case and for Johnson to have accepted it.

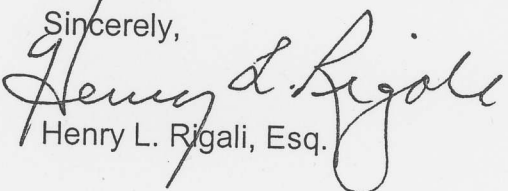
The jury found in Johnson's favor on the wiretap violation. It also found in Frei's favor on his counter-claims for defamation (falsely telling the police he had threatened to murder him), intentional infliction of emotional distress (extreme and outrageous conduct utterly intolerable in a civilized society) and for a civil rights violation. The latter required proof Johnson interfered with or attempted to interfere with Frei's 1<sup>st</sup> Amendment right of speech and expression (the blog) by intimidation, etc. The jury clearly believed Johnson's presence on the lake, the shouted vulgarities, etc, was part of a calculated effort to intimidate and harass Frei for his outspoken criticism of Johnson. Again, how does this involve the Town of Holland or the use of public funds ?

The damages awarded by the jury were fairly insignificant on both sides. However, both the wiretap and civil rights statutes provides that a prevailing party is entitled to an award of reasonable attorney fees.

I am enclosing copies of the following:

1. Johnson's civil wiretap complaint vs. Frei;
2. Frei's Answer and counter-claims against Johnson;
3. Town of Holland Police Report;
4. Defendant's Opposition to Award of Plaintiff's Legal fees; and
5. Affidavit in Support of Opposition to Award of Plaintiff's Legal Fees.

Thank you for speaking with me on the phone last week. Again, sorry for the length of this but the devil is in the details. Please let me know if you require any additional information.

Sincerely,  
  
Henry L. Rigali, Esq.

Enclosures(5)