

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS

PALMER DISTRICT COURT
DOCKET NO: 1143 CV 0293

BRIAN JOHNSON
Plaintiff

vs.

PETER FREI
Defendant

DEFENDANT'S OPPOSITION TO AWARD
OF PLAINTIFF'S ATTORNEY FEES

The Defendant opposes an award of plaintiff's attorney fees. By statute, a prevailing party in a civil wiretap action would normally be entitled to recover attorney fees. However, on information and belief, plaintiff's legal fees are being paid for by the Town of Holland. See Affidavit of counsel attached. If so, Defendant contends this is improper and violates the Massachusetts conflict of interest law. G.L. c. 268A § 23(b)(2)(i & ii).

Plaintiff initiated this litigation by filing a private, civil wiretap complaint for a non-employment related incident that occurred during a fishing derby on a Sunday afternoon. He was not working for the Town of Holland at the time nor did the circumstances which led to his filing suit even remotely involve the Town of Holland.

The fact that the plaintiff is an elected public official or that the defendant has been an open critic of town officials - including the plaintiff - does not change the essentially "private" nature of this litigation. Nor do the Defendant's counter claims provide a justifiable basis for public dollars to pay the personal legal expenses of what the jury has found to be defamatory, outrageous conduct beyond which any member of a civilized society should be expected.

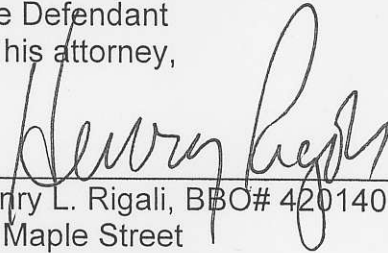
The plaintiff was not counter-sued because he is a public official, was not sued in his official capacity nor because for his conduct as a public official. Unlike its federal counter part, proof of the defendant's state civil rights counter claim does not require proof of governmental or official misconduct

The plaintiff was not counter claimed for work or activities performed in his official capacity nor was the Town of Holland a party. In this case the defendant initiated the litigation. There is nothing in the complaint which indicates he was required to do so by law nor in the discharge of official responsibilities. There is no suggestion that Town of Holland residents have any direct interest in the claim or counter-claims nor that they are harmed or benefit by its result. This is a private matter, involving private individuals.

The misuse of public funds for private gain violates the Massachusetts conflict of interest law , G.L. c 268A § 23(b)(2), in two respects. Sub-section (i) makes it improper for a municipal employee to "receive anything of substantial value" not authorized by statute or regulation for or because of the employee's official position. This section make it illegal for Mr. Johnson to receive the benefit of having his legal fees paid for with public tax dollars. Sub-section (ii) makes it improper for town representatives (in this case the selectmen or whoever authorized the Town to pay Mr. Johnson's legal fees) to use their official positions to secure unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

WHEREFORE, the defendant respectfully moves this court to make inquiry into the source of payment of Plaintiff's legal fees and not allow an award for Plaintiff's legal fees unless permitted by law.

Respectfully Submitted,
The Defendant
By his attorney,

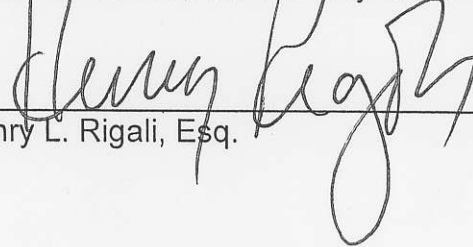


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March 12, 2013

Certificate of Service

I certify a copy of the foregoing document was served upon the Plaintiff by delivery in hand to his attorney, namely, upon Tani E. Saperstein, c/o Saperstein & Saperstein, P.C., 1350 Main Street, 12th Floor, Springfield, MA 01103, this 12th day of March, 2013.



Henry L. Rigali, Esq.