



TRIAL COURT OF THE COMMONWEALTH  
DISTRICT COURT DEPARTMENT  
SPRINGFIELD DIVISION  
50 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01103  
(413) 748-8600

*Clerk-Magistrate*  
John S. Gay

*Chief Probation Officer*  
Terence S. O'Neil

*First Justice*  
John M. Payne, Jr.

*Justices*  
Robert S. Murphy, Jr.  
Charles W. Groce, III  
Michele A. Ouimet-Rooke  
Patrick S. Sabbs  
Robert T. Santaniello

October 4, 2019

Mr. Peter Frei  
101 Maybrook Road  
Holland, MA 01521

**Re: Peter Frei, Plaintiff-in-Counterclaim v. Brian Johnson, Defendant-in-Counterclaim, Docket No. 1143CV00293**

Dear Mr. Frei:

Enclosed please find Justice Michele A. Ouimet-Rooke's **Decision on Cross Motions in Limine Regarding Admissibility of State Ethics Commission Letter** for the above-captioned case.

If you have any questions or concerns, please contact the clerk's office at (413) 748-8600.

Sincerely,

  
Georgina Serrano  
Judicial Secretary

Enclosure

cc: Tani E. Sapirstein, Esquire  
Sapirstein & Sapirstein, P.C.  
1331 Main St., 2<sup>nd</sup> Floor  
Springfield, MA 01103

**COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT OF THE COMMONWEALTH**

HAMPDEN, ss.

DISTRICT COURT DEPARTMENT  
PALMER DIVISION  
DOCKET NO. 1143CV00293

\_\_\_\_\_  
PETER FREI,

Plaintiff-in-

Counterclaim

v.

\_\_\_\_\_  
BRIAN JOHNSON,

Defendant-in-

Counterclaim

**DECISION ON CROSS MOTIONS IN LIMINE  
REGARDING ADMISSIBILITY OF STATE ETHICS COMMISSION LETTER**

1. This case can be summarized in an abbreviated manner as follows.<sup>1</sup> Peter Frei is a Town of Holland resident and "blogger." Brian Johnson works for the Town of Holland. Frei has criticized Johnson and the Town of Holland on his blog. The relationship between the two is contentious.
2. On February 19, 2011, Johnson and friends were ice fishing on a lake in front of Frei's house participating in Holland's Derby Day. An incident occurred between the parties, which included alleged threats, a physical scuffle, public urination and a secret videotaping of the event.
3. Subsequently, Frei sought a harassment order against Johnson. (This event has consequence as is it the crux of Frei's claim against Johnson for Abuse of Process (See

<sup>1</sup> The Court acknowledges that this is a "bare bones" synopsis of the history of this case which has been in litigation for 8 years in the District Court.

Frei's Substituted Answer and Counterclaim ¶¶ 24-32, in which Frei alleges that Johnson caused a police officer to give false testimony at the hearing.)

4. Johnson then filed a Civil Complaint against Frei on June 9, 2011, alleging one count of violation of G.L. c. 272 §99 (wiretap statute). Mr. Frei answered the complaint pro se, and then filed a 'Substituted Answer and Counterclaim' with an attorney. Frei asserted eight counterclaims against Johnson.
5. A jury trial was held February 25-28, 2013. The Court (Poehler, J) allowed a Directed Verdict on Frei's Abuse of Process counterclaim. The jury returned verdicts on the remaining counts and the Court awarded attorney's fees to each party.
6. Subsequently, the parties appealed to the Appellate Division of the District Court ("ADDC"). The ADDC affirmed both the jury's verdict and Court's decision regarding the directed verdict and attorney's fees. Both parties then appealed to the Massachusetts Appeal's Court, which on May 16, 2018, affirmed all with the exception of the directed verdict on Frei's Abuse of Process claim. The case was returned to the district court on that claim only.
7. Subsequently, Frei filed a motion requesting that discovery be reopened on the issue of a State Ethics' Commission ("SEC") opinion letter. The Motion was denied after hearing. Frei's Motion for reconsideration was denied as well. The matter was then transferred to the Springfield District Court for trial.
8. A final pretrial conference was held on August 29, 2019. The parties were directed to address evidentiary issues regarding the SEC, which Frei was seeking to introduce as a document at trial.



9. Frei seeks to admit the SEC opinion letter stating that is relevant to his Abuse of Process Claim, because a state agency determined that it was improper for the Town of Holland to have payed Johnson's legal fees in a private suit against Frei. Frei also asserts that it's admissible as a public records, and or through a Keeper of the Records subpoena. Johnson seeks to exclude evidence of the letter on the grounds that it was not included in Frei's counterclaim and is not relevant.
10. The SEC Public Education Letter states that it was the Town Selectman (not Johnson) who authorized the Town's payment of attorney's fees. Johnson, although a town employee, is not a Town Selectman. The SEC declined to authorize adjudicatory proceedings against Johnson et.al, as the Town had been repaid in full, and there were issues of reliance on counsel advice in paying the attorney's fees. The SEC issued a Public Education Letter.
11. Mass. Rules of Evidence, Rule 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Telum, Inc. v. E.F. Hutton Credit Corp., 859 F.2d 835 (10th Cir.1988).
12. The concept of relevancy has two components: (1) the evidence must have some tendency (probative value) to prove or disprove a particular fact, and (2) that particular fact must be material to an issue (of consequence) in the case. Harris-Lewis v. Mudge , 60 Mass. App. Ct. 480, 485 (2004), Commonwealth v. Schuchardt 408 Mass. 347, 350 (1990).

13. The fact that the SEC, subsequently made a determination that the Town of Holland should not have paid Johnson's attorney's fees in his private suit against Frei is not relevant, as to material fact, as to the Abuse of Process claim.
14. Furthermore, the question of who paid for the lawsuit, was never part of Frei's counterclaim. Frei's claims is, as it has always been, the assertion that Johnson filed suit against him to thwart him from complaining about Johnson, and that Johnsons intentionally caused a police officer to give false testimony at a harassment order hearing. The issue of who paid for the attorney's fees and the appropriateness of those payments is not relevant.
15. Furthermore, the SEC Opinion Letter contains conclusory statements and findings as related to their probable cause determination. Admission of the letter would have little to no probative value and would be prejudicial to Johnsons.


### ORDER

Wherefore, the Court exercises its discretion over the conduct of trial, and the admission of evidence and orders the following:

1. Frei's motion to admit evidence of the SEC Opinion Letter and finding is **DENIED**.
2. Johnson's motion to exclude the SEC Opinion Letter is **ALLOWED**.
3. Frei is advised that this ruling prohibits him from referencing the SEC letter and/or findings in his case, through his opening statement, closing argument, personal testimony, testimony of witnesses, or attempting to admit the document into evidence.

ENTERED:

10/4/19

  
Michele Ouimet-Rooke  
Justice of the District Court