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## Restriction of Depositions in Civil Case Against Boughton Raises First Amendment Concerns

DANBURY - First Amendment advocates are outraged over the city's efforts to restrict access to depositions in a federal lawsuit filed against Mayor Mark Boughton by his former executive assistant.

The city is asking a federal magistrate to sanction a lawyer, labor attorney Elisabeth Maurer, for releasing the documents and have asked her to refrain from speaking with the media until the case filed by her client, Wendy DaCosta, is resolved.

An attorney working for the city, Joanne Zelman, also sent a "cease and desist" letter to a local blogger for putting comments from the depositions on his website, asking the blogger to stop publishing information from the documents.

"This is a clear infringement on my First Amendment rights," said Al Robinson, author of the HatCityBLOG. "I believe the city is trying to hide something and the people have a right to know what's in these depositions. This is a very serious matter."

Some say the depositions point to a pattern of Danbury officials not following their own rules and procedures when it comes to hiring city employees -- a pattern that could embarrass Boughton in his bid to win the Republican Party's nomination for governor next year.

Boughton, however, called the depositions a "fishing expedition" by Maurer for future lawsuits against the city.

"This is a frivolous lawsuit that's wasting everyone's time," he said. "The city will prevail."

The depositions include testimony about "unofficial" files kept on Danbury's city employees by department heads and a well-connected employee receiving a disability pension despite alleged evidence he was able to work.

During a federal court hearing last month, Zelman said, "it does appear there is some kind of ulterior motive ... to hurt the mayor who has announced his candidacy for governor."

Zelman claims the depositions released by Maurer were unredacted and contained personal information about city employees as well as personnel matters that both parties had agreed would be kept confidential.

Maurer, in her response to the city, said while she understands why Boughton would want to keep the subject of the expensive litigation "secret to avoid scrutiny" by city residents, "Ms. DaCosta has the right to share the testimony given under oath by current and former government officials."

Former Freedom of Information Commission Director Mitchell Pearlman said it sounds like a classic case of bullying.

"There is such a thing called the First Amendment, in case anyone hasn't heard about it," he said. "Unless there is a court seal on the documents, those who have a copy can do whatever they want with them."

He added the city's attempts to quash the blogger from disseminating the information amounts to "a classic case of bullying" and sounds like a SLAPP -- a strategic lawsuit against public participation.

"It's an attempt to try and discourage people, not out of fear that they might lose a lawsuit, but because they don't have the money to defend against it," said Pearlman, who teaches First Amendment law at the University of Connecticut. "Either it's bullying or ignorance of the law."

Danbury officials recently provided redacted copies of the depositions to Hearst Connecticut Newspapers, more than three months after the request for the documents was made.

Boughton said it was never the city's intention to withhold the depositions, but to ensure that personal information, including children's names and medical information, was redacted from the documents.

"Our biggest concern is that third-party information will be splashed all over the Internet, including DaCosta's," Boughton said.

DaCosta filed the lawsuit against Boughton and other city officials in June 2012, claiming her civil rights were violated when she was fired from her job in August 2011.

DaCosta was fired after several complaints alleging harassment were filed against her by a city department head with whom she had had a brief relationship.

She claims, however, other male employees, including Boughton, had engaged in similar conduct. A filing in the lawsuit last December claims Boughton "had been accused of harassment by (former personnel director Carol) DeSantie, and had been treated differently" than DaCosta.

DeSantie and Boughton have denied the allegations, and depositions taken in the case lack hard evidence of any complaint having been filed against Boughton.

Questions surrounding DeSantie surfaced when she left the job in January 2004, as part of a "restructuring" of the department, and was paid for about six months after leaving the position.

DeSantie admitted in her depositions that she didn't have the required qualifications when hired in 2002 as the city's personnel director and didn't recall applying or even looking for the job, which she did recall was presented to her by state Sen. Michael McLachlan, R-Danbury, then the mayor's chief of staff.

DeSantie denied telling former deputy personnel director Julio Lopez that she was hired because Boughton was "infatuated" with her, as Lopez claims in his own deposition in the case.



"I have no recollection of making a statement like that," DeSantie said in her deposition.

Maurer said the depositions, including those of Boughton, DaCosta, DeSantie and Virginia Alosco-Werner, current human resources director, show a pattern of following a "policy of preference" when it comes to city employees.

"The city continues its practice of disregarding the civil service rules and the city's own policies and charter in its administration of public employees," she said.

Maurer settled a lawsuit with the city in April 2010 for \$450,000. It claimed officials failed to follow their own procedures when hiring firefighters from the 2005 civil service list.

The city admitted mistakes were made at the time and pledged to make changes to prevent similar errors in the future.

However, another lawsuit filed by Maurer, which remains pending, claims the city, yet again, failed to follow its own rules when hiring truck drivers for the public works department.

Alosco-Werner in her deposition said, "There's discretion in discipline and applying policies."

Alosco-Werner was questioned about unofficial files that, she said during her testimony, department heads often keep on their employees.

The files, she said, often contain hand-written notes with information about misconduct, performance action plans or counseling of various employees.

That information, Alosco-Werner said, could become part of the "official" file if the information becomes part of a formal disciplinary action.

When asked if employees had access to the "unofficial" files, Werner said, only "if it becomes part of the official file."

Boughton said most department heads, including himself, don't keep unofficial files.

"It's not a common practice," he said.

Lopez said during his deposition in July that he attempted to have Police Officer Robert Arconti, who was out on injury leave around 2004, return to "light duty" after he was filmed allegedly working for a local concrete business.

"He once refused light duty, in my opinion, because it will interfere with his concrete business," Lopez said.

Arconti had applied for, and eventually received, a disability pension from the city.

Boughton said the allegations are unsubstantiated and were made by a former disgruntled worker, Lopez, "who didn't get the pension he wanted from the city."

"It's totally unfair to Arconti and an attempt to muddy the waters," he said. "None of this has anything to do with DaCosta's claims."