



NEW HAVEN REGISTER

Monday, March 24, 2014

Cool Justice: How Deep are Danbury Taxpayers on the Hook for Bad Jokes?



DANBURY - Lawyers, a mayor and other officials walk into a room on Sept. 12, 2013.

They talk for several hours.

Two months later, a blogger reports about an alleged extra-professional relationship between the mayor and a personnel director who was terminated and put on paid administrative leave for six months.

Lawyers for the mayor try to intimidate the blogger, pretending they have the authority to order him to remove two short news items.

The blogger and the local daily newspaper had received public records from another lawyer who is suing the city in a sexual harassment case. The targeted news items contain no confidential information. Rather, they question whether the mayor was infatuated with the former personnel director and warped by power.

Lawyers for the mayor then try to get a federal magistrate judge to fine the lawyer who produced the public records. They fail.

“When you file a motion like this, you’re really not asking for someone to be punished,” Hartford attorney Michael Rose, counsel for Danbury mayor and gubernatorial candidate Mark Boughton, told *The Connecticut Law Tribune*. “You’re just asking for the rules to be followed.”

I spoke with Rose last week, asking him – among other things – how he developed his comic material.

During the conversation, Rose seemed to be earnest and capable. In a lawyerly admission, he acknowledged his firm goofed on the baseless threat against Hat City blogger Al Robinson: “I get how this came across; our intentions were a little more enlightened than people might have thought.”

Still, under Rose’s watch, Team Boughton was able to stifle reporting on the depositions for months.

The depositions reveal the existence of secret personnel files, wildly uneven application of disciplinary policies, the peculiar tenure of the personnel director and huge spending to fight freedom of information requests. That’s just the short list. Notably, the personnel director connected to Boughton admitted to a lack of qualifications, could not remember how she got the job and did not respond directly to the question of whether she received a payment from a city business.

The action against Robinson has the stench of a frivolous SLAPP suit, also known as Strategic Lawsuit Against Public Participation.

Further mucking up transparency, Rose subsequently asked U.S. Magistrate Judge Donna Martinez to drop the hammer on plaintiff lawyer Elizabeth Maurer of Ridgefield. This motion for sanctions or fines by its very nature chilled or intimidated others — lawyers especially — from disclosing information discovered in litigation. The public has an absolute right to know about discoveries regarding the conduct of its servants. By not summarily dismissing the motion against Maurer, this judge made her sweat it out.

Martinez responded this way in an order dated March 3, 2014:

“Generally speaking, dissemination of pretrial discovery materials by the receiving party is not prohibited absent a protective order ... defendants have made no showing of substantial embarrassment or harm that outweighs the public’s interest in Mayor Boughton’s performance of his governmental responsibilities ... Defendants have not shown clear evidence of improper purpose in [attorney] Maurer’s dissemination of the deposition transcripts ...”

In conclusion, Martinez directed both parties to try to get along.

There remained an issue regarding whether an associate of Maurer had what was construed to be a blanket verbal agreement to keep a certain deposition secret. Martinez slapped Maurer, calling her action in this regard “troubling.” Maurer told me she sees it this way: “There was no agreement as to how the depositions would be treated. In prior cases, they [Rose Kallor] tried to mark public records such as meeting minutes ‘confidential.’ In this case I had refused to enter into an agreement.”

Danbury under Boughton does indeed have a special way of ducking, repelling and otherwise stalling requests for public records. Rose would do well to counsel Team Boughton toward sunshine regarding production of property belonging to the people.

For example, when I went to Danbury City Hall last year to get some public records with a colleague from *The Litchfield County Times*, we were greeted with intimidation tactics and stonewalling.

We were asked:

“Who are you?”

“Why do you want those records?”

“Why are you investigating that?”

We were told that even the most rudimentary requests must be presented in writing and reviewed by a lawyer. This gave me new appreciation for lawyers as creators of fiction. They love to dance around the requirement of the law that documents must be produced promptly. As a practical matter, this means documents must be produced immediately, unless the agency can prove that this would interfere with the normal course of business.

We were also told that “a public agency may have to review certain files prior to disclosure to ensure that no documents are being disclosed that could be considered exempt under the FOI statute, or that are privileged.”

Hmm. Why would privileged or exempt material be held in a public file? If that’s the case, then the small army of lawyers ensconced therein is providing ineffective assistance of counsel.

Meanwhile, the case of Boughton’s former friend of three decades and personal assistant – Wendy DaCosta – against the city, is still pending. DaCosta worked for seven years in the mayor’s office before being fired in 2011 as the result of a sexual harassment claim. DaCosta’s lawyer, Maurer, claims the city failed to follow civil service rules, its own policies, the city charter and state and federal laws by treating DaCosta differently than other employees. Maurer said DaCosta was denied family medical leave to obtain substance abuse treatment and did not receive equal application of progressive discipline policies.

Boughton has denied any wrongdoing.

In a prior case, Maurer uncovered favoritism in the hiring of Danbury firefighters, winning a \$450,000 cash settlement against the city and other remedies.

By Boughton’s account, the city spent at least \$100,000 defending the DaCosta case as of September 2013. That does not include city manpower. I’m looking into the total costs of the DaCosta case and others, but it likely will take some time to get answers.

Hat City blogger Robinson called the Martinez ruling “a victory for transparency.”

“This is about a mayor with something to hide,” Robinson said.