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August 8, 2015

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Dear Henry,

It is almost four years since we filed an answer to Johnson's complaint.

Tomorrow, Dana will be in Superior Court an her request for four preliminary injunctions.
Very short, as you know Dana was elected a year ago to serve on the Board of Health. Last fall, Brian Johnson approached the Zoning Board of Appeals with a request for two variances. The ZBA notified other Boards of Johnson's applications. As a member of the Board of Health, Dana was mandated to answer with her concerns; the statute c.40A, s.11 uses the imperative “shall.”
Dana's answer was a well done research which made it clear that Johnson's property was nonconforming and not grandfathered as Johnson claimed. Johnson realized that Dana would appeal the decision if the ZBA would grant his variances as granting the variances without Johnson claiming and proving a hardship would be outside the law. The ZBA told Johnson first to change his applications for variances into applications for special permits and then suggested he should withdraw his applications as he would not need any special permits as his property would be grandfathered.....
Johnson, Wettlaufer, and Kowalski ganged up against Dana and started a recall based on a libelous recall affidavit. Kowalski lost his chair position on the BOH as Dana and the third member Ken Ference voted Ken to be the new chair person. Dana filed a complaint and moved for injunctive relieve on short notice and got it approved.
It will be interesting....

First I apologize for not writing this letter earlier but I had to help Dana to get all her documents ready to file in Court.

You will not like my letter as it will not be what you probably are expecting. As you may recall, I paid extra last time I made a payment, I paid an additional $1,000 towards you handling the appeal to the Appellate Division of the District Court, but before you started work on the briefs, you terminated your Representation in this case; this is in part what you wrote:

“3rd - I didn't terminate representation because you didn't agree w/my analysis or because I didn't agree with yours. I ended it because of the unfortunate tone and attitude reflected in your 5/27 email. That email stinks, Peter. You should be ashamed of yourself. It is in fact rude, arrogant and self-righteous. Between the lines it tells me that if you lose the case it will be the fault of stupid lawyers (i.e., lawyers who don't see it your way) whom you've had to prod and carry on your shoulders since day one, lawyers who can't be counted on to do basic research, find particular cases, read them the way you do, etc, etc. Your email was timed after 2 in the morning so based on our friendship and all we had been through I was ready to pass it off as the product of fatigue and frustration. Perhaps you thought I had slighted you by not giving the legal argument you had so painstakingly and recently put together sufficient acknowledgement. I wasn't sure but I found it disrespectful and totally uncalled for. However, once it became clear you truly felt the way you expressed yourself in that email it was clear to me that I could no longer represent you.”

The big disagreement we had all along was the different interpretation of the definition of “aggrieved person.” I remember bringing it up on occasion and you angry yelled at me, “what the fuck is wrong with you...” you did this twice and you called my definition of “aggrieved person” the “blind spot.” I don't have a problem with you yelling at me but I have a problem with you not getting the fundamental principle that in general as a legal principal civil remedies remedy violations of individual personal rights and not public wrongs. Recording someone surreptitiously in MA is a public wrong, violating someones privacy is a violation of a personal individual right. What is remedied by s.99Q are violations of personal individual rights and not public wrongs or government interests.

Sapirstein, judge Poehler and you often talked about a “violation” of s.99Q. Another legal principle is that civil remedies do not create new substantive laws, they merely are an instrument by which violations of individual personal rights are remedied.
The law is much like math, if all your equation are right all the pieces fall into place and the solution is at hand!

I strongly believe that it harmed my case when you stated in your motion in reference to s.99Q “ambiguous language of statute” and “complex issues” and “first impression,” and “unconstitutional the way it is written.” I think you need to make such an argument if the law is not on your side and not in a situation where the plain language is on your side and expresses exactly what you need, and above it all, it is consistent with legal underlying principles. The language of the statute is not “ambiguous.” Every single decision, whether criminal or civil, is consistent with the notion that Johnson has to claim and prove a violation of an individual personal right, while a crime occurs even if no individual personal right is violated.
On day two of the trial you argued in your motion for directed verdict; “There's got to be some expectation of privacy, there's got to be a recording that takes place, that threatens some sort of privacy interest, that's been his position. **The only case law which is contrary to that,** and it is the *Hyde* case, which is in a criminal context, and so the question before this Court and quite frankly why I think this is a case of first impression is whether or not in the civil context some sort of aspect of privacy is required to establish that claim by the preponderance. “
Trial transcript day two, p4, line 22.
Henry, you were wrong, *Hyde* is not contradicting anything I claim or any other case law; *Hyde* is a criminal case and the crime is complete with a surreptitious recording (public wrong,) without a violation of a private interest; the police officers in *Hyde* did not avail themselves of the civil remedy asking for damages.

I do think that the proper way to deal with Sapirstein's misrepresentation of the *Hyde* case, claiming that the SJC ruled that no violation of privacy was necessary to avail oneself to the civil remedy when in fact the SJC ruled that no violation of privacy was necessary to be convicted of a crime, would have been to bring it to the judge attention and if the judge would not see it file an interlocutory appeal to the Appellate Division of the District Court pursuant to c.231, s.118A. But you would have to see it first to make the

argument. While Sapirstein quoted the *Hyde* case verbatim she falsely claimed that the SJC made the statement in connection with a civil case when in fact *Hyde* was a criminal case and the SJC opined that Hyde was wrong with his claim that as long as he did not violate the police officers' privacy he could not be convicted.

A remedial statute is not there to punish wrong doing, it is there to compensate the victim. If there is no violation of a personal individual right, there is no victim. I argue the point in my brief and you do have a copy of that too (if you don't have a copy any longer, I'm more than glad to email you a copy.)

Judge Poehler bought into your unfortunate argument, “It is the defendant's position that G.L. c.272, s.99 is 'unconstitutionally vague, over broad and as enforced against [him] violates state and federal guarantees of free speech and expression.' **Acknowledging that the statute has been construed in several criminal cases, the defendant maintains that the ''civil' privacy interest sought to be protected is not clear.**' Defendant's memorandum in support of his motion to dismiss, page 5.”
Judge Poehler's Memorandum of Decision and Order on Defendant's Motion to Dismiss, page 2-3.

You claim that you researched the *Com v. Dowd* case which clearly states that, “G. L. c. 272, Section 99Q, provides a civil remedy for an 'aggrieved person' whose private interests are violated by an unlawful wiretap interception. See *Pine v. Rust,* 404 Mass. 411 , 414 (1989).”

I found both, the *Dowd and Pine v. Rust* cases. The *Pine v. Rust* case you discarded also; the only two cases who spell it out you discarded and did not use!

The next mistake was not to make the argument that the town is a government entity and not not a person and can therefore not request attorney's fees. Instead you made the argument that a third party payed for Johnson's legal fees and that he should not be reimbursed.

You read the *Dowd* case; why did you not realize that the argument that government entities are not persons and can therefore not collect attorney's fees as an aggrieved person would have been a slam dunk and the argument that would have been successful?

The next mistake was not knowing about c258E, s.3(g) in connection with the Criminal Harassment Proceedings. Section 3(g) precludes any later filed claims from issue and claim preclusion and does so by mandate. Knowing about this statute would have saved time & money and prevented the risk of having Johnson's motion granted!

The next mistake was that you failed to realize that accusing another of a crime and doing that in writing (police report) is per se libel and not just defamation. Per se libel does not require prove of any damages to collect damages, Restatement Second of Torts, §570. You could have stopped Sapirstein's line of questioning about damages as damages are being conclusively presumed in a case for libel per se. Jury instructions would also have looked different, more favorable to me. Sapirstein's line of argument and questioning had a minimizing effect on the jury award for the defamation claim.

Another mistake was not realizing that the MCRA is not creating any substantive law and that it is, again, just a remedy through which violations or attempted violations of M.G.L. and constitutional laws are actionable. You went along with Sapirstein's argument that only time spent on the MCRA claim could be claimed under the fee shifting provision. There is no such a thing as a violation of the MCRA. The MCRA is a civil remedy like s.99Q. If there would not be any violations or attempted violations of laws there would not be anything actionable under the MCRA. You failed to point that out. You also missed the fact that even Johnson's **attempt** to inflict emotional distress is actionable under the MCRA. The fact that Johnson libeled me towards the police by accusing me of a crime is the crux why the jury found Johnson violated my civil rights by treats, intimidation and coercion. Again, I made this argument in my brief if you want to read more about it. Everything which happened on that February day in the ice was actionable under the MCRA and covered by the fee shifting provision.

Henry, in your “DEFENDANT'S SUPPLEMENT TO MOTION FOR ATTORNEY FEES AND SUPPLEMENT TO OPPOSITION TO AWARD OF PLAINTIFF'S ATTORNEY FEES,” you wrote:
“With some exceptions, the **defendant agrees with the plaintiff** that an award of legal fees in a multi-claim case are generally limited to the cause of action that permits the fee award; the civil rights case for the defendant and the wiretap case for the plaintiff.” See page 1.

You bought into Sapi's argument that only time spent on MCRA “violation” would be recoverable; Henry, how would a civil rights case look like without actual violation of substantive law actionable under the MCRA?

As my attorney you have a fiduciary duty towards me, your client. The minimal award of attorney's fees in the amount of $16,024 out of $64,500 is in big part due to,

- your mistake of not realizing that MCRA remedy is premised on attempted violations and actual violations of substantive laws actionable under the MCRA;
- not maintaining detailed enough financial records (Poehler's decision);
- failure to include expert witness's credentials to get reimbursed for expenses paid to him (Poehler's decision);
- failure to back up your claim, that attorney's fees should be paid because Johnson made ridiculous settlement offers, with case law (Poehler's decision page 5 FN4. See also p.6, FN6.);
- your failure to tell Poehler that I paid every dime of the $64,500 after Sapirstein insinuated at the motion hearing for attorney's fees that I probably did not pay a dime too (like Johnson.) Your reason for not telling the judge you revealed to me during a phone conversation, (“we don't necessary want this [cash payments] to be public.”)

But there is more. Your cost schedule as part of plaintiff's opposition to defendant's motion for attorney's fees includes reference with date 2/21/2013, “received DEP action vs. Town.” You therefore had a copy of this important document which you did not have during trial and you blamed me for not giving you a copy or not to have brought a copy to trial. This was an important exhibit which never made it into evidence. The medical records you claimed I never mentioned were on the convenient website for you to print at any given time.

Henry, I will agree with you that it is always more difficult to have an appellate court see it your way, especially a pro se appellant. It would have been so much easier to get what I was entitled to according to the law during trial.

Last but not least, you did not know the procedural rules how to appeal the District Court's judgment and you thought that we would have 30 days to file a notice of appeal. If Sapirstein would not have filed an appeal within 20 days to the Appellate Division, it would have ended right there and I would not have had a chance to get justices and all these mistakes could not have been rectified.

For all the above reasons I truly do not feel that I owe you more money.

I'm not angry or mad at you, nobody is perfect and we all are just human. In the event that I will get reimbursed the full amount on appeal, I will certainly let you know and reconsider.

If you get bored, Dana's case may go to trial and we need a trial attorney. It is the usual stuff, libel; emotional distress and MCRA. Straight forward, 22 defendants who signed a fraudulent libelous recall affidavit. If every defendant only has to pay $5,000 it would bring over $100,000!

As I wrote earlier, Dana will be in front of a judge tomorrow and after they file an answer we will file a motion for judgment on the pleadings. Dana filed an Exhibit Compendium with her complaint of about 200 pages; we should have everything we need to make her case. As I understand, there will be a jury trial on the damages if she gets her motion for judgment on the pleadings granted.

I hope you are doing well and look forward to hearing from you and hope that I'm still your friend.

Best regards,