

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT
PALMER DIVISION
CIVIL ACTION NO. 1143CV293

Brian Johnson,)	
Plaintiff)	
v.)	MOTION FOR REQUEST FOR
Peter Frei,)	CLARIFICATION
Defendant)	

Now comes the defendant, Peter Frei, in the above captioned matter and hereby moves this court to clarify its decision on cross motions in limine, filed by the parties, regarding admissibility of Public Education Letter ("PEL",) issued by the State Ethics Commission ("SEC".)

In par. 14, in this courts decision, this court opined in part, "Frei's claims [sic] is, as it has always been, the assertion that Johnson filed suit against him to thwart him from complaining about Johnson."

According to this courts own ruling, Frei therefore plead his abuse of process claim correct¹/,

1 Frei's abuse of process claim reads as follows: "Fully aware of the above and knowing he had neither suffered nor is able to prove damages, Brian Johnson filed the instant law suit, caused legal process to be served upon Peter Frei for an ulterior or illegitimate purpose, including but not limited to a coercive effort to silence and deter Peter Frei from availing himself of his legal right to seek redress and to hold Brian Johnson accountable for his actions. See par. 31, of his, "defendant's substituted answer, affirmative defenses, counterclaims and jury demand."

contrary to Johnson's assertion in his motion for limine.

If Frei can prove his claim that Johnson filed his suit against him "to thwart him [Frei] from complaining about Johnson," Frei will prevail with his counter claim. Filing a suit to "thwart" an opponent from complaining is clearly an ulterior motive. Hence, Johnson would be guilty of abusing the legal process by doing so.

Here is where Frei is lost and needs clarification. The term "thwart" is synonym with the words "deter," and "discourage," the very words used by the SEC in their PEL as the reason Johnson filed suit against Frei.

According to the PEL, Johnson filed suit against Frei to "deter" and "discourage" him from filing further petitions against him and the town. As a matter of fact, the SEC verbatim stated, "[i]t is a violation of the conflict of interest law, and a misuse of one's public position, to use public resources to fund a private lawsuit to deter future lawsuits and to solicit or receive such funding because of one's position," page 2 PEL; and, furthermore, "Town resources may not be used to fund private lawsuits in an effort to interfere with the exercise of citizens rights," page 4 PEL.

It goes without explanation that the question whether Johnson filed his suit to "deter" and to "discourage" Frei from exercising his constitutional rights is at the center of Frei's counterclaim, and the determining question. And as such, everything else but irrelevant²/.

Here the question Frei grapples with, did this court miss this fact, or does this court find this, not mentioned or addressed fact in its four page decision, also irrelevant? (In his motion in limine, Frei clearly made the argument that the PEL is relevant as it spells-out the

2 Also, the fact that the town paid Johnson's attorney's fees could create a strong inference in any juror's mind that Johnson abused the legal process; it is the cost of litigation which prevents most people from filing frivolous lawsuits for an ulterior motive. There was no risk for Johnson, or so he thought!

ulterior motive for Johnson to file his complaint against Frei.)

Under par. 15 of this court's decision, this court states, "[f]urthermore, 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 Johnson."

How can a document which has, according to this court, no or little "probative value" be "prejudicial" to Johnson?

Here, Frei needs clarification as to this court's reasoning behind its statement declaring the PEL, published by the SEC, and based on its record, as "conclusory."

There is no sensible rationale which would preclude reliance on sworn statements and testimony faithfully recorded in the course of an investigation conducted by the SEC. All of the hallmarks of reliability attend upon the record of this independent state agency which follows the strict procedures prescribed by G.L. c.30A, § 12, in creating such record.

If justice is still defined as the "maintenance or administration of what is just by law, as by judicial or other proceedings," not allowing the PEL into evidence is prejudicial to Frei and not to Johnson.

If this court's decision would be based on law, every deposition or set of interrogatories upon written questions would be meaningless as they could be declared prejudicial and inadmissible, as soon as the deponent would make incriminating statements.

WHEREFORE, Frei would respectfully request clarification of the questions,

!) whether the fact that Johnson filed suit against Frei to "deter" and "discourage" him from filing future petitions is irrelevant in the context of Frei's counterclaim for abuse of process;"

2) whether, in the opinion of this court, Frei failed to properly plea his abuse of process claim properly;

3) whether the SEC's statements based on a two year and eight month long investigation, during which Johnson

testified under oath and submitted sworn statements,
are considered "conclusory statements in the opinion
of this court.\³/"

Respectfully written and submitted by the
defendant,

Peter Frei
101 Maybrook Road
Holland, MA 01521
phone (413) 245 4660
November 7, 2019,

Peter Frei

CERTIFICATE OF SERVICE: I hereby certify that a true
copy of the above document was served upon the
following by First Class Mail, postage prepaid:
Tani E. Sapirstein,
Sapirstein & Sapirstein, P.C.
1331 Main Street, 2nd Floor
Springfield, MA 01103

November 7, 2019,

Peter Frei

Attachment;

Copy of the Public Education Letter, published by the
State Ethics Commission

3 A "conclusory statement" is commonly understood as a
statement made in an argument that states a
conclusion, without any foundation, underlying logic,
or reasoning.