

Town of Clifton Park

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ETHICS BOARD



BRIAN GLICK
Chairman

Ethics Board Meeting Minutes

November 14, 2017

In attendance:

Chairman, Brian Glick
Ronald Ochrym
Linda DiCaprio
James Mahon
Attorney, Tom McCarthy
Secretary, Meg Springli

Judge Robert Rybak

Absent:

Linda Campion recused herself and was absent

The meeting was called to order at: 6:46pm by Board Chair, Brian Glick.

Old Business:

Request for advisory opinion from Jonathan Schopf, continuing from 10/24/2017

Members of the Ethics Advisory Board were introduced as was the guest, Robert Rybak. Judge Rybak then handed a packet which included a written statement which enumerated his reasons why he felt that County Supervisor Schopf should not be allowed to represent private clients in Town Court. Supporting documents included in the packet were: Attachment A - Ethics Opinion 798 from the New York State Bar Association Committee on Professional Ethics which was rendered on 9/28/2006, Attachment B – an undated letter from David Grandeau of David Grandeau and Associates, and Attachment C – a biography of David Grandeau taken from www.davidgrandeau.com on 11/14/2017.

After some discussion regarding the definition of “Town Officials” Judge Rybak stated that he would concede that judges are not “Town Officials for purposes of the Code,” and then he added that he was concerned about the appearance of impropriety and the possible public perception of a Town Official such as a County Supervisor representing a client in Town Court.

It was agreed that the types of court cases should be separated into categories as the request for advisory opinion sought.

One such category involves tickets issued by the Town such as animal control, zoning code enforcement and security/parking violations. Another category involves tickets written by State and County Police, i.e. State Police and Sheriffs. The other category would include small claims and civil cases where two private parties would be involved without the Town being a Party.

Mr. McCarthy asked whether a “business dealing” under the code was intended to cover contracts with the Town, involving buying/selling/leasing such as procurement, or requesting an approval from the Town such as in land use, and he asked whether it would also include a plea bargain in a case of animal control violation(s)? Judge Rybak stated that he felt that the County Supervisor should not represent any Party against the interest of the Town, citing the aforementioned Ethics Opinion 798. Judge Rybak then remarked that he felt that although the County Supervisor has no direct dealing with the Town, his decisions would have an impact on the Town. He explained that he believes that once the plea agreement is approved by him as judge that would constitute a business arrangement.

Next, Judge Rybak stated that in the second category involving small claims and/or civil cases, he was concerned about the comfort level of the public in a case where there would be two opposing parties (non Town-related) and one of the parties might be represented by the County Supervisor. Judge Rybak stated that he would pass judgement based on evidence of the case, but that his concern was the possible public perception. Then he added that the New York State Bar Association might also find reason for concern.

Discussion was had concerning how many small claims cases involve representation by a lawyer, anyway. The Judge said there were some.

Mr. Mahon asked if there had ever been any similar incident involving a Town employee. Chairman Glick remarked that there was an Ethics Board Decision in 2011 in which the Board found that an employee who was a lawyer but did not work in that capacity for the Town was not disallowed from representing a client in Court outside of his work hours. Judge Rybak stated that he was not aware of that ever happening, but he disagreed with the earlier opinion. While recognizing that the employee was a relatively low level employee and the Board had maybe not considered him to have much power or standing, he found a difference with a County Supervisor. Mr. McCarthy asked if the judge could recall when any other Town or County official had come before his court and asked whether Kevin Tollisen had done so. Judge Rybak stated that Mr. Kevin Tollisen, Halfmoon Supervisor, had appeared as an attorney in Clifton Park Town Court and that the ethics concern was never raised then, but that he would advise Mr. Tollisen the following day that he would not be allowed to do so again while he is a County Supervisor.

Mr. McCarthy asked for clarification about the acquisition of the opinion letter (Attachment B) by David Grandeau. Judge Rybak stated that he had received the letter on the morning of 11/14/2017 although the letter was not dated, as he had asked Mr. Grandeau for an independent review over the previous weekend. Responding to a question from Mr. McCarthy, Judge Rybak stated that Mr. Grandeau was not compensated for his opinion.

Chairman Glick, then asked the judge if a case involving a child who was mauled by a dog, could be sent to another court in the region if it was a civil case (i.e. resident v. resident) where the Town was not a Party. The judge responded that he felt that it could not, because any Judge in the County would have the same recusal problem.

Then the chairman asked if traffic violation cases could be seen in any other court in the local area and the judge responded that he did not think so in a case where the Town was a party, adding that although the County Supervisor had no day-to-day business with the Town, in his opinion, there could be an appearance of a benefit to the client who has hired the “right attorney with connections”. McCarthy asked how many cases have led to verdicts on civil claims where the judge had to render a decision. Judge Rybak responded there had been none in the past year, and maybe a couple in the past five years.

When asked about any prior personal or professional dealings with Mr. Schopf in the past, Judge Rybak said that he had none, and that Mr. Schopf had not appeared in court before him prior to his election as County Supervisor to his recollection. Then, Judge Rybak noted that Mr. Schopf had opposed him in a prior election, stating that he did not hold that against Mr. Schopf, because he had won the election, noting that he may feel differently if he had lost. Next he said that some of the prior opponents had also appeared in his Court but that he did not remember them all. Responding to a question from Mr. McCarthy, he did not remember the names of any other attorneys who opposed him after his first election 35 years ago. Judge Rybak said that Judge Hughes had told him he was not comfortable when Mr. Schopf (who was at the time on the Board of County Supervisors) represented a client on an animal control case and Judge Hughes then recused himself. Judge Rybak stated that he felt that this was an ethics issue.

Judge Rybak stressed that he had reached out to Mr. Grandeau because he wanted to be assured that he was right. He first spoke to him and asked whether the consultant agreed with him, and then asked about fees. He said he would have paid a fee if the quote was a reasonable one, but in the end Mr. Grandeau called him back and said that he would provide the letter without charge.

Mr. Glick asked if there was a jurisdictional body that could make the decision? Judge Rybak stated that he felt it was something the Ethics Board could decide, adding that the judges are also governed by a stringent code of ethics.

The chairman asked if Mr. Schopf should be allowed to represent a client in traffic cases and Judge Rybak replied that he felt it would be a violation because it was a “business dealing” where the Town was a party. And then he added that he felt there was a possible perception of impropriety in the area of public opinion. The Judge stated that in the future he would ask the County Supervisor to recuse himself if he came before the Town Court, in such a case, and advise the client that they could retain another attorney. Then he stated that he felt it was possible that Mr. Schopf could also be reported to the Bar Association.

Next, Judge Rybak stated that his decisions are based on the individual evidence presented in a case and not on the person who was defending them. He added that he felt the Advisory Opinion of the Ethics Board in 2011 was wrong but that he felt that private litigation cases were less of a problem than those cases that involved the Town as a party. Finally, Judge Rybak stated that he might be ok with Mr. Schopf representing those civil/small claims cases where the Town was not a party, but that tickets written on the zoning code, animal control or parking/traffic tickets would not be acceptable to him based on the fact that it would be appearing against the Town’s interest.

Mr. Mahon asked if Mr. Schopf could not represent these cases in the County or the Town. Judge Rybak stated that he felt the Bar Association allowed that he cannot represent anyone for

criminal cases anywhere in the County, and this would likely include animal control, vehicle and traffic cases in any Town.

Judge Rybak thanked the Ethics Board for their time and then departed at 8:00pm

Chairman Glick stated that he felt Town Code stated that Mr. Schopf is a Town Official by definition, but that he felt it is not as clear about any violation of the ethics code in all 4 categories.

Mr. McCarthy said that his quick review of the Bar Association opinion during the meeting shows that it likely covers the issue of a County Supervisor defending Vehicle and Traffic Law (VTL) cases. Then he added that it may well mean that he is prohibited from defending cases involving the County Sheriffs or the DA's office, but the opinion there is based on the Attorney's professional code of conduct, and not the Town's Ethics Code, under which Mr. Schopf has asked for an advisory opinion. He also asked the Board to consider anything that has been presented that would prevent the official from representing individuals in civil cases and small claims cases.

Mr. McCarthy then asked the Ethics Board to interpret the portion of the code that prohibits an official from acting in a representative capacity under the business dealing sections. The Town Attorney advised them to consider the definition of a "business dealing" and determine whether that was intended to deal with procurement type issues and or permits and approvals before the land use boards, such as buying/selling/leasing, negotiating a contract with the Town, and whether it also could be intended to mean representation in court where the case is resolved by a plea agreement approved by the court.

There was general agreement that representing someone in tickets written by the Town and presented by the Town Attorneys would fall under the code section prohibiting representing someone against the interests of the Town regardless of the animal rights niche of The Official's law practice.

Discussion was had concerning the role of the Judge here in light of the concept that the judiciary is an independent branch. It was noted that the court may or may not choose to follow whatever is decided here anyway. Discussion was had about whether the election explained some of the Judges actions here and the positions he advocated and whether the opinion should reference that.

Mr. McCarthy listed some options that the Advisory Opinion could consider in rendering a decision, such as the following:

1. Invite the Town Official and/or the Court Justice to reach out to the Ethics Board before any questionable case, or appearance of impropriety.
2. Could refer to the election issue directly.
3. Regarding Vehicle and Traffic Law cases, consider whether the Town Code speaks to VTL type cases. The Bar Association Opinion 798 does speak to it, and the Ethics Advisory Board may be inclined to agree, but the request for an opinion here is under the local code. It was suggested that:
 - a. The Board may either want to render its opinion under the local code and make the Supervisor aware of the Bar Association opinion under the different standards they used, or

- b. Determine that the Board agrees that the Bar Association prohibits a County Supervisor from acting as Attorney in cases involving VTL tickets.
4. Civil cases/private party litigation should be analyzed separately.

The Board debated the 4 categories and asked the Town Attorney to prepare a draft opinion along the general lines of the discussion for consideration by the full board.

New Business: NONE

Other business:

Minutes from the last meeting were unable to be approved because two members informed the chairman that they had not received them. It was decided that they would be sent out again and that members should respond with their edits or approval of the minutes. Discussion ensued about approving minutes via email and then filing them with the Town Clerk so that can be done in a timely fashion since meetings are not held frequently.

Meeting adjourned at: 8:34pm

The next meeting is scheduled for: November 28, 2017 at 6:30 pm

Respectfully submitted,


Meg Springh