

Victory For the First Amendment

Grievance Panel Rules In Favor of Access to Government Officials

By Charlene Lavoie, Community Lawyer

The Sturbridge Grievance Committee of the Connecticut Bar Association, has submitted its recommendation on the grievance filed by former First Selectman William McCabe against the Community Lawyer.

As you may recall, Mr. McCabe complained to the grievance committee that I, as Community Lawyer, had contact with then Selectman Gauger about the case *Mills v Pettit* in violation of Rule 4.2 of the Rules of Professional Conduct.

The Committee concluded that the exception to Rule 4.2 of the Rules of Professional Conduct can involve communications with government officials. The committee stated that it is necessary to weigh the public policy behind the protection of First Amendment rights and access to government against the public policy of Rule 4.2 protections.

This decision clarifies the fundamental right of all citizens to have direct contact with their elected officials and that there is a difference between private disputes and public disputes.

The Rules of Professional Responsibility are a guide for lawyer's professional conduct. Most lawyers handle private cases—not public cases regarding the citizenry and its government. There has not been, therefore, any call to interpret the exceptions to Rule 4.2 in regard to direct contact between a lawyer and a government official.

The purpose of Rule 4.2 is to protect a lawyer's client from being harassed or taken unfair advantage of by opposing lawyers. When he says: "In representing a client, a lawyer shall not communicate about the subject of the representation with a party the

lawyer knows to be represented by another lawyer in a matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

The rule makes two exceptions, however, as explained in interpretative comments following the rule: "Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials

about the matter."

This is not only a victory for the citizens of Winchester, but all citizens of Connecticut. This is the first time in Connecticut that this issue was considered by the Committee. Its conclusion reminds us that citizens are the source of governmental authority and there can be no barrier to citizen communication with their government officials about matters of public concern.

Recalling Mills v. Pettit

The case *Mills v Pettit* was a public challenge of an illegal action of the Board of Selectmen. The Board of Selectmen illegally appropriated money into a line item for early retirement which was not in the budget and not approved by the Town Meeting. The Charter is clear that it is only the Town Meeting which may approve budget line items presented by the board. The board may not create new line items during the course of a budget year.

During this case it came to the public's attention that the petition challenging this Board action, signed by 360 electors, was not certified by the Town Clerk. This act was not revealed to citizens until two years and \$15,000 was spent on this case and is a question which still requires an answer.

The Town revealed this information on the eve of trial in a motion to dismiss the case which was supported by the affidavit of Town Clerk William Ruska. His affidavit stated that he did not certify the

petition two years earlier. I subpoenaed the town clerk to appear for a deposition to question him about his failure to certify the petition. The town attorney attempted to prevent this deposition and the town clerk failed to show up until ordered by the Court to do so. I was clear from the deposition that the Town Clerk made statements which were incorrect and misleading and required a rebuttal.

Selectman Gauger and I conferred. Mr. Gauger criticized the action of the Board from the beginning, voted against the illegal appropriation and assisted in the petition drive. The facts in Mr. Gauger's affidavit are matters of public record and provide rebuttal to the town clerk's statements.

The failure of the Town Clerk to certify the petition resulted in the eventual dismissal of the case without any consideration of the important public issues and merits of the case.