Panel finds Winsted's LaVoie violated lawyers' ethics code

12/15/93 By JUNE PETERSON
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WINSTED -- A local grievance panel has determined community lawyer Charlene LaVoie violated ethical standards when she obtained an affidavit from defendant John F. Gauger Jr. to argue her case against a $10,000 benefit selectmen granted to a retiring police captain.

The grievance panel's so called finding of probable cause will next be reviewed by the Statewide Grievance Panel. The panel will then schedule a hearing within 120 days before making any decisions. The process is open to the public, said Gail S. Kotowski, counsel to the local grievance panel.

Former mayor William H. McCabe filed the complaint with the grievance panel Nov. 1.

McCabe claimed LaVoie secured an affidavit from Gauger, who was a selectman then and named a defendant in the lawsuit, without the consent of attorney Stephen O. Allaire, who was representing the town at the time.

The Rules of Professional Conduct state a lawyer cannot communicate with a defendant unless permission is granted by the defendant's attorney.

On Monday, McCabe received a letter from Kotowski, which stated the panel found probable cause that LaVoie violated the Rules of Professional Conduct. The panel is comprised of three attorneys and one lay person, Kotowski said.

If the panel agrees a violation exists, LaVoie likely will be issued a reprimand. In more serious cases, such as when a criminal offense is committed or reprimands are culminated, a lawyer may be disbarred, Kotowski said. LaVoie said this is first time she has gone through the grievance process.

LaVoie yesterday denied she committed any violations. She said she believes the rule does make exception for public officials. The purpose of the rule is to protect clients who are represented from the "skills" of other lawyers.

"I think it wasn't improper for me to speak to John, and John Gauger willingly spoke to me," LaVoie said. "What John swore to in his affidavit were facts of public record. John did not divulge any confidential information -- he attested to public matters."

Under normal circumstances, the wronged party would file the complaint, LaVoie said. Because of that, she questioned McCabe's motivations. "I don't think Mr. McCabe had Mr. Gauger's interests at heart," she said. "the public can make up their own minds as to the reasons Mr. McCabe filed (the complaint)."

McCabe, however, believes a violation occurred. Without over-

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sight of LaVoie's office by the community or a board, McCabe said the only avenue of accountability is through ethical standards. "The real goal here is to dismiss the number of groundless, politically motivated lawsuits," he said yesterday.

In 1991, LaVoie filed a lawsuit against the town on the behalf of resident Patricia Mills over the $10,000 supplementary retirement benefit selectmen approved for retiring police captain Francis J. O'Neill in 1991. The suit was dismissed in October because a petition asking for a town meeting to consider the payment was never certified by Town Clerk William T. Riiska.

Gauger's affidavit, dated Oct. 3, states he presumed "the town clerk was presenting a certified petition to the board . . . ."

The hearing was held Oct. 4. The suit was dismissed several days later.

Kotowski's letter states LaVoie's reasons for communicating with Gauger were unacceptable.

Allaire, the former town attorney, did not want to comment.

LaVoie has since written a letter to Gauger that states further legal action could occur if the petition is not certified. Gauger, who is now mayor, voted Dec. 6 against asking the town clerk to certify the petition.

In a letter to Town Attorney Kevin F. Nelligan explaining the grievance, McCabe wrote, "In light of Attorney LaVoie's stated position on dealing directly with defendants in litigation with the town, the politically partisan nature of her office and her history in suing the town, the absence of any electoral accountability or community oversight of her office, the only course of action left to protect the rights of townspeople was the filing of this grievance."

LaVoie has served as community lawyer since 1990 when she took over the job from Ellen K. Thomas. Her job is funded by the Shafeek Nader Trust for the Community Interest.