

Arthur Ginsberg's Rebutal to Redress of Grievances Report

[PROPOSED DRAFT BY SUBCOMMITTEE 11 MAY '12 [INIT.]

Petition #21: Grievance of Arthur Ginsberg, Nashua, New Hampshire.

MAJORITY REPORT

Grievance Unfounded.

Committee Majority Findings:

The Petitioner alleged numerous instances of misconduct in the judicial branch arising out of his divorce: that of his wife's attorney in offering false evidence and testimony at trial; that of Superior Court judges in allowing the entry of such false evidence and testimony; that of Professional Conduct Committee (PCC) in delaying the hearing of the Petitioner's complaint and voiding its first investigative report concerning his wife's attorney; that of the PCC's investigator in falsifying the second investigative report concerning his wife's attorney; that of the Supreme Court in changing the standard of proof in PCC investigations while the Petitioner's case was in the investigative state from "preponderance of the evidence" to "clear and convincing evidence [sic];" that of the PCC's chairman, disciplinary counsel and investigator for applying the clear and convincing standard and finding that the Petitioner's complaint had not met it; that of the Supreme Court for vacating an earlier order accepting his appeal¹ from the PCC's decision; and that of the Department of Justice (DOJ) "for not addressing specific violations of law and putting more effort into investigating" the Petitioner's complaint.

- I find it very disheartening that members of this committee didn't even read the documents to my complaint, which is obvious from the incorrect statements above (and below). I have been informed that Representative Sorg, an attorney, wrote the recommendation. Either Attorney Sorg is not very good at his job or this was an intentional misrepresentation of the facts.
- The Supreme Court **did not** change the burden of proof during my PCC investigation! At the conclusion of the second investigation in June of 2006, Special Investigator Diane Nicolosi, Disciplinary Counsel McCafferty and PCC Chairperson Margaret Nelson all determined that the Plaintiff could not prove his complaint by "clear and convincing evidence" and recommended to the PCC that it dismiss the complaint with a warning. In June 2006, "preponderance of evidence" (not "clear and convincing evidence") was the standard of proof to be shown by a complainant to merit a hearing by the PCC. Subsequently, 6 months after it was illegally used in my case, in January 2007, Supreme Court Justice Dalianis (a former business partner of Attorney Griffith), without a formal proceeding or proposal to the Supreme Court Rules Committee, changed the burden of proof, on a trial basis, from the "preponderance of evidence" standard to the "clear and convincing evidence" standard. (The Supreme Court did not ratify that change of the investigation evidence standard until September of 2007...over a year after it was illegally used in my case). A rational person would come to the conclusion that there was a conspiracy by Diane Nicolosi, Landya McCafferty, and Margaret Nelson to illegally apply the "clear and convincing standard of proof."

The Committee notes that, the Committee having no resources by which to initiate and conduct its own investigations, the burden of persuasion in its consideration of grievance petitions is necessarily on petitioners. In this case, the Committee has concluded that the Petitioner failed to meet this burden

¹ Note – This was not an appeal. It was a petition under Rule 11 for the Supreme Court to take on original jurisdiction in the matter, which it did. The basis for a Rule 11 petition is that the proper or required hearing of grievance (i.e., due process) had not been provided by the hearing agencies (PCC et al.).

in that: (1) he failed to show that to the extent the Superior Court allowed false evidence and testimony it did so knowingly²;

- There was over 500 motions filed in my divorce case...the judges never shut down this abuse of the system, which Attorney Hantz informed Disciplinary Counsel increased after I filed my PCC Complaint against Attorney Griffith.
- On July 18, 2006, Margret Nelson, Chairperson of the Professional Conduct Committee wrote: “The Professional Conduct Committee finds that the Complainant’s allegations could not be proven by clear and convincing evidence and the complaint is dismissed with a finding of no professional misconduct. The Committee finds, however that the factual predicate for a number of Respondent’s conclusory statements and arguments concerning (a) Complainant’s mental health and actions towards his ex-wife, and (b) Complainant’s 1999 financial earnings were inflammatory and without a strong factual basis. Further, the Committee is concerned about Respondent’s judgment in responding to the demands and assertions of his client and otherwise generating unnecessary litigation. Accordingly, Respondent is warned under Rule 3.3(a) to take more care in the future to insure the accuracy and fairness of his pleadings and statements to the court.” The records of this case show that Attorney Griffith’s abuse of the judicial system could not have taken place if the Superior Court carried out their job as dictated by law. Apparently, this committee did not read the supporting court documents I supplied.
- PCC Chairperson Nelson’s statement that the **“factual predicate for a number of [Attorney Griffith]’s conclusory statements and arguments were inflammatory and without a strong factual basis, generating unnecessary litigation,”** and Disciplinary Counsel McCafferty found Mr. Griffith’s conduct, **“*inter alia*, harmful to the children and lacking basic decency,”** would be expected to result in a finding of professional misconduct. After all, Attorney Griffith’s illegal actions resulted in an unfair divorce decree and property settlement, contributed to one of my daughter’s nervous breakdown, and forced me into bankruptcy. My ex-wife was living on more money than my children and me. The Judges all came to Attorney Griffith defense even when he got caught in perjury and suborning perjury, which one of my attorney’s, Anna Barbara Hantz told Special Investigator Diane Nicolosi. Diane Nicolosi eliminated this and other evidence that was incriminating to Attorney Griffith, which was supplied by Attorney Hantz, Attorney Pillsbury, and GAL Attorney Earnshaw. Attorney Hantz attended a meeting with Disciplinary Counsel McCafferty to complain of misrepresentations by the 2nd investigator Diane Nicolosi.

(2) he failed to show that the Supreme Court’s change in the standard of proof in attorney disciplinary complaints was intended to undermine his case specifically and was not merely part of a neutral general revision to PCC policy and procedural rules then being undertaken;

- If members of the committee had read the supplied court documents, they would have seen that the standard of proof was changed 6 months after the decision in my PCC Complaint, and 1 month after my Rule 11 case was vacated. The PCC illegally used clear and convincing evidence in my case 6 months before it was even proposed for use on a trial basis. One of the basic principles of constitutional law, stated by the Framers, is that there is no ex post facto law in the US. In America, laws do not apply retroactively.

(3) he failed to show that the Supreme Court’s order vacating a prior acceptance of his case was inconsistent with its standard practice in the sorting out and prioritizing of its appellate docket³ and allocation of its limited resources;

² Does this mean that if the courts of this State are incompetent, there is no recourse for its citizens? Does this mean a citizen of the state must prove that a court’s malpractice was intentional before that citizen has any outlet for complaint? It is understood that judges have personal immunity for their actions in court; nevertheless, it is absurd to suggest that the court system as distinct from judges in their persons, has no obligations to the citizens of the State to provide a competent judiciary.

³ As noted above, Petitioner’s case was not on the appellate docket: In accepting my Rule 11 case, the Supreme Court assumed original (trial level) jurisdiction to hear the matter.

- Attorney Sorg appears to not understand or is misrepresenting the nature of a Rule 11 Complaint...it's not an appeal! In My Rule 11 petition, I submitted evidence that the Supreme Court should assume original jurisdiction (Rule 11) over the matter due to procedural errors and misconduct itself by the PCC and PDC. This was the first time the New Hampshire Supreme Court had accepted a Rule 11 Petition against its own Professional Conduct Committee and Disciplinary Counsel and therefore the first time the Supreme Court had assumed original jurisdiction of the underlying complaint of professional misconduct by a lawyer. My Rule 11 was accepted for briefing and oral arguments.
- Between August 21, 2006, and November 22, 2006, there were an aggregate of 12 motions and court rulings, which reinforced and supplemented my Rule 11 case. On November 14, 2006, the Court replaced retired Justice Horton with retired Justice David Brock. Justice Brock, a good friend of Mr. Griffith had a conflict of interest, which the Supreme Court was well aware of (as are many NH lawyers). Then, on December 7, 2006, without giving any reason, the Supreme Court suddenly vacated the October 18, 2006 order accepting the petition. Although it is indeed within the Court's discretion whether to accept such a petition in the first place, once accepted, there is no provision in the law or in the Supreme Court's own procedural rules to vacate the original order. By law, the Supreme Court was required to at least read the briefs and hear oral arguments.
- I presented documented evidence to the Supreme Court that the Disciplinary Counsel violated the law, misrepresented interviews with my lawyers (I included a letter from one of my attorneys attesting to this fact), refused to produce to the Supreme Court the full case files and falsified an investigative report. One of my attorneys, Anna Barbara Hantz, even went and complained to Disciplinary Counsel Landya McCafferty, about the misrepresentations and incriminating evidence against Mr. Griffith that was left out of the report from the second investigator's interview with her (the first investigation by special counsel, attorney Dewhirst, found sufficient evidence against Mr. Griffith to warrant a hearing). Attorney Dewhirst's report was not docketed by the PCC, is not in the case file, and I have been denied access to this report. There are no provisions in the law for a do over in the case because it involves a well-connected lawyer.

(4) he failed to show that the discipline recommended by the PCC was inadequate and insufficient either to deter the attorney in the future or to protect the public;

- When citizens of New Hampshire commit serious violations of the law they are punished. When people are first charged with violations of law, if the 'Clear and Convincing' burden proof was used, very few people would go to trial let alone punished. The judicial branch has made lawyers a special class of citizen above the law. Many attorneys with whom I have talked with believe that what happened in this case answers the question of whether the new rules of professional conduct have had any effect in reducing cronyism among the State Supreme Court, lower courts, the convoluted Attorney Disciplinary System, and the NH Bar. Most lawyers feel there are more serious violations of the law in my case than the incidents that led to Supreme Court Justice Thayer being disbarred and Justice Brock being impeached by the House of Representatives.

April 9, 2007 Commentary from HALT – A Washington D.C. based Organization for Legal Reform

HALT, an Organization of Americans for Legal Reform, Inc. was founded in 1978. It's the nation's largest legal reform organization - a nonprofit, nonpartisan public interest group of more than 50,000 members. Dedicated to providing simple, affordable, accountable justice for all, HALT's Reform Projects challenge the legal establishment to improve access and reduce costs in our civil justice system at both the state and federal levels. In one report, HALT stated that New Hampshire's Professional Conduct Committee "reveal a system that shields lawyers, not clients."



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IN THE NEWS



By Suzanne M. Blonder & Emily Werth

In response to public calls for reform, the New Hampshire Supreme Court changed the process for investigating attorney discipline complaints last month (“New rules to relieve backlog of complaints against attorneys,” April 1, 2007). While efforts to improve efficiency are commendable, ensuring that legitimate allegations of attorney misconduct result in disciplinary action should be the system’s top priority. Unfortunately, the Court’s new rules do little to achieve either goal.

In a state that, according to the American Bar Association’s latest figures, imposes formal discipline in less than eight percent of complaints, it’s time to remove loopholes for unethical lawyers. But instead, the court has enlarged the system’s bureaucracy by authorizing staff attorneys at the Discipline Office to screen and dismiss grievances—in addition to a separate committee already in place to perform that same function.

Curiously, the new rules also require the initial screening panel to hold grievances to a Draconian standard before passing them to a hearing panel. If a complaint does not demonstrate “clear and convincing” proof of an ethics rule violation, it’s thrown out. No hearing. No review. The case is effectively tried at the screening stage—before a victim has the full opportunity to show evidence.

New Hampshire must establish a more robust system for investigating attorney misconduct. At the initial phase, complaints should always be given the benefit of the doubt, not discarded out of hand. Instead of giving wide authority to dismiss complaints to staff attorneys and lawyer-dominated screening committees, the court should require greater public participation.

Limiting the role of lawyers in the screening process will not only diminish the potential for conflicts of interest in New Hampshire’s tight-knit legal community, but will also demonstrate that every consumer complaint receives full and fair consideration. Protection of New Hampshire’s legal consumers requires nothing less.

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(5) he failed to show that any factual errors in the JCC [sic] investigator’s report were intentional, willful, negligent or malicious; and (6) he failed to show that the actions or omissions of PCC and DOJ personnel were not reasonable consequences of their having reached the same or similar findings as the Committee has reached here.

- There is a close relationship between the Judicial Branch and the Department of Justice. They are all members of the Bar and many have worked together in the past. Senior Assistant Attorney General, Richard Head, told this committee that the DOJ did not open an investigation into my complaints. But, ADA James Vera and investigator Richard Tracy were assigned to this “non-investigation.” And, the file is over 400 pages...walks like a duck...quacks like a duck...
- Apparently, suspicion of conspiracy, documented evidence of breaking the law by quashing an investigative report, falsifying an investigative report to the New Hampshire Supreme Court, replacing laws on the books with ones that didn’t exist, collusion within the New Hampshire Supreme Court, tampering with evidence by the PCC and PDC, and much more did not “establish reasonable suspicion.” The DOJ either has an unreasonable understanding of the law or my complaint was handled unethically and illegally since this was a political issue that would cause grief and embarrassment to the state.

The Committee notes in conclusion that neither it nor, through it, the Legislature, can disturb specific judgments of the judiciary or decisions of executive department officials made in the exercise of discretion, but can only propose legislative remedies of a general nature when problems of a general nature are demonstrated. Nor will the Committee attribute evil motives to judicial or executive branch personnel absent either a pattern of wrongful behavior or objective proof of wantonness in the case of an isolated act. The Petitioner in this case, though clearly and perhaps justifiably dissatisfied with the conduct and outcomes of his trial and PCC complaint, has demonstrated not unseemly motive or systemic deficiency upon which to base a legislative remedy.

As long as the NH Supreme Court, its Professional Conduct Committee, Professional Disciplinary Committee, and the Department of Justice are permitted to make up its own rules, and apply those rules capriciously, without any legislative oversight, the people of this state will be prevented from obtaining justice from their courts.

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Vote _____ - _____
Rep. _____ **for the Committee**