



# WSBA

OFFICE OF DISCIPLINARY COUNSEL

Linda B. Eide  
Senior Disciplinary Counsel

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October 21, 2008

Cherie Rodgers  
4803 W Woodgrove Ct  
Spokane WA 99208

Re: Your grievance against James A. McDevitt  
WSBA File No. 07-01707

Dear Ms. Rodgers:

We have completed our investigation of your grievance against lawyer James A. McDevitt. The purpose of our review has been to determine whether sufficient evidence exists on which to base a disciplinary proceeding. Under the Rules for Enforcement of Lawyer Conduct (ELC), a lawyer may be disciplined only on a showing by a clear preponderance of the evidence that the lawyer violated the Rules of Professional Conduct (RPC). This standard of proof is more stringent than the standard applied in civil cases.

Based on the information we have received, insufficient evidence exists to prove unethical conduct by McDevitt by a clear preponderance of the evidence in this matter. Therefore, we are dismissing the grievance. Our decision to dismiss the grievance is based on a review of your original grievance received on October 22, 2007, McDevitt's November 21, 2007, August 5, 2008 and October 16, 2008 responses, and your comments dated December 14, 2007 and September 26, 2008. On December 20, 2007, we deferred our investigation given the investigation by the Department of Justice (DOJ).

You served on the Spokane City Council from 1997 to 2005. During that time, bondholders and others sued the city over its involvement in the River Park Square (RPS) development. As noted in your grievance, McDevitt was employed at Preston Gates & Ellis in 2001, when President Bush appointed him United States Attorney for the Eastern District of Washington. You allege that he failed to disclose to the government a conflict of interest based on his firm's work for the Spokane Downtown Foundation, a non-profit corporation involved in the RPS development.

Specifically, you allege that McDevitt violated RPC 1.7 by failing to obtain the government's consent to his alleged conflict of interest. On November 19, 2001, when McDevitt became acting United States Attorney for the Eastern District, no criminal charges were pending arising from the RPS development. To the best of our knowledge, no criminal charges have ever been filed. McDevitt's "client" is DOJ. McDevitt left private practice before becoming a United States Attorney. RPC 1.7 addresses conflicts of interest between current clients. But McDevitt

never represented the Spokane Downtown Foundation at the same time that he represented DOJ. By its terms, RPC 1.7 does not apply.

The gist of your complaint appears to be that McDevitt did not disclose his involvement in RPS to the government after his nomination for his current post. However, the forms accompanying his November 21, 2007 response show that he disclosed that his law firm was a defendant in bondholder litigation over RPS.

Moreover, since your grievance was filed, the United States Office of Professional Responsibility (OPR) in a letter to you dated July 24, 2008 (attached to McDevitt's August 5, 2008 letter) concluded that McDevitt did not fail to disclose relevant information regarding the RPS litigation. OPR investigates allegations of misconduct by DOJ attorneys. See <http://www.usdoj.gov/opr>.

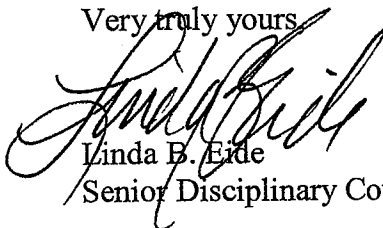
In addition, as noted in McDevitt's October 16, 2008 letter, he asked you what evidence you felt you had that supported criminal charges. Then he recused himself, and the matter was investigated by lawyers from the United States Attorney's Office for the Western District of Washington. In a September 5, 2008 press release the DOJ reported that after its lengthy investigation it concluded that no federal criminal charges would be filed.

We understand that you have believed that some conspiracy defrauded the citizens of Spokane in the RPS mess. As you noted in your grievance, the city's lawyer pursued such claims until new counsel for the city abandoned that theory.

Both OPR and DOJ have thoroughly investigated your allegations without finding any basis to proceed. We have reviewed your conflict of interest theory under RPC 1.7 and do not find that rule applicable under these facts.

For the reasons stated above, we are dismissing this matter under ELC 5.6(a). If you do not mail or deliver a written request for review of this dismissal to us within **forty-five (45) days** of the date of this letter, the decision to dismiss your grievance will be final.

Very truly yours



Linda B. Eide  
Senior Disciplinary Counsel

Enc. McDevitt's October 16, 2008 letter

cc: James A. McDevitt

**REPORT TO THE REVIEW COMMITTEE**

(Dismissal)

**Respondent Name WSBA #:** James A. Mc Devitt, 6075

**Grievant Name:** Cherie Rodgers

**WSBA File #:** 07-01707

**Disciplinary Counsel:** Linda B. Eide

**Summary:** The attached documents relate to a grievance that Disciplinary Counsel dismissed pursuant to ELC 5.6(a). In response to that dismissal, the grievant requested review and this matter is being referred to the Review Committee for its consideration as provided by ELC 5.6(b).

**Recommendation:** Disciplinary Counsel continues to recommend dismissal of this matter. Please note that Disciplinary Counsel dismissed this matter after determining that further investigation would be inappropriate. If you disagree, please consider ordering further investigation. As you are aware, should you order this matter to hearing or order that an admonition be issued, the record before you will become public without further notice to the grievant or respondent under ELC 3.1(b).

**Attached Documents:**

- 1.  Disciplinary Counsel's dismissal letter
- 2.  Grievance
- 3.  Respondent's response to grievance and/or deposition (and Disciplinary Counsel's request for response, if applicable)
- 4.  Additional correspondence (from respondent, grievant or third parties)
- 5.  Grievant's request for review and any subsequent materials
- 6.  Client file (all or selected documents)
- 7.  Court and other records (including dockets)
- 8.  Witness statements and/or depositions (except respondent's)

**Protective Order requested:**

Yes  No

**Respondent requests response be withheld from grievant:**

Yes  No

cc: James A. Mc Devitt



**WASHINGTON STATE BAR ASSOCIATION  
DISCIPLINARY BOARD**

1325 Fourth Avenue, Suite 600 • Seattle, Washington 98101-2539  
Telephone: (206) 727-8280 • Fax: (206) 727-8314

**WILLIAM J. CARLSON**  
Chair of the Disciplinary Board

**NOTICE**

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

**Dismissal**

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed. The decision of the Review Committee is not appealable.

**Advisory Letter**

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

**Admonition**

If the Review Committee determined that there was sufficient misconduct under the Rules for Enforcement of Lawyer Conduct (ELC) to warrant the issuance of an Admonition under Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is public information. ELC 3.1(b).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

**Order to Hearing or for Further Investigation**

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

**Other:** \_\_\_\_\_

If you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of the Disciplinary Counsel at (206) 727-8207. The decision of the Review Committee is not appealable.

Date: 4/3/09

File Number: 07-01707

Mailed To: JAMES A. MC DEVITT, CHERIE RODGERS

**BEFORE THE DISCIPLINARY BOARD OF THE  
WASHINGTON STATE BAR ASSOCIATION**  
Shea Meehan (Chair), Norma L. Urcia and Grace Greenwich  
**FINDING AND ORDER OF REVIEW COMMITTEE III**

**Respondent Lawyer: JAMES A. MC DEVITT**

**WSBA FILE NO. 07-01707**

**Respondent's Counsel:**

**Grievant: CHERIE RODGERS**

Having reviewed the materials regarding the above captioned grievance, Review Committee III of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED that a hearing should be held on the allegations of the grievance.  
( ) and consolidated with other grievances against this lawyer.

There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED that the grievance should be dismissed with no further action.

( ) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED that an admonition should be issued to the lawyer. (ELC 13.5)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding:

\_\_\_\_\_  
\_\_\_\_\_

( ) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: \_\_\_\_\_  
\_\_\_\_\_

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

( ) IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay \$\_\_\_\_\_ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.

( ) and IT IS ORDERED \_\_\_\_\_  
\_\_\_\_\_

Dated this 3<sup>rd</sup> day of APRIL 2009.

The vote was 3-0

Shea C. Meehan  
Shea Meehan, Chairperson of Review Committee III