



Breean L. Beggs

June 25, 2010

Rocco Treppedi
808 W. Spokane Falls Blvd.
Spokane, WA 99201

Re: Your June 23rd Letter

Dear Rocky:

I am in receipt of your letter and thought it best to provide you with a brief written response, and request that you promptly withdraw your threat to take action against me that would further chill my participation in the ongoing public policy debate on police oversight.

I believe that I have a constitutional right to engage my elected representatives in the debate on the issue of police oversight. Any limitation of that right under your interpretation of Washington's Rules of Professional Conduct would have to pass strict scrutiny. However, one does not need to reach that analysis because the communications that you describe were not connected to the Zehm litigation, and the individuals I spoke with are neither parties to the Zehm litigation nor are they speaking agents with any individual authority to bind the City in the Zehm litigation.

The Washington Supreme Court rejected your interpretation of RPC 4.2 in *Wright v. Group Health*, 103 Wash.2d 192, 203 (1984). In *Wright*, attorneys for Group Health attempted to prohibit members of the organization from voluntarily meeting with opposing counsel by arguing that they were representatives of an organization that was party to the litigation. The Supreme Court held that the only restriction on opposing counsel contact was for those members of the organization with the authority to make statements that would legally bind the corporation in litigation.

Since we hold an adverse attorney may, under CPR DR 7-104(A)(1), interview ex parte nonspeaking/managing agent employees, it was improper for Group Health to advise its employees not to speak with plaintiffs' attorneys. An attorney's right to interview corporate employees would be a hollow one if corporations were permitted to instruct their employees not to meet with adverse counsel. This opinion shall not be construed in any manner, however, so as to *require* an employee of a corporation to meet ex parte with adverse counsel. We hold only that a corporate party, or its counsel, may not *prohibit* its nonspeaking/managing agent employees from meeting with adverse counsel."

Id. (emphasis in original). The Court spent some time in the opinion narrowing the definition of speaking/managing agent to those individuals that could legally bind the corporation by speaking.

Those who are ultimately responsible for managing the entity's operations have the strongest interest in the outcome of any dispute involving the entity.... These officials are the multi-person entity's alter ego-they can speak and act for the entity and can settle controversies on its behalf.

Id. at 202. Unless the City Charter has changed recently, no individual council member has the required speaking authority to legally bind the City and are therefore not off-limits to voluntary ex-parte contact with attorneys adverse to the City under *Wright*. In addition, none of the current Spokane City Council Members are parties to any matters that I am currently prosecuting against the City.

More to the point, all of the communications you refer to in your letter dealt exclusively with the issue of a pending proposed ordinance to amend police oversight in Spokane and did not involve the substance or settlement negotiations in the Zehm matter. I was explicit in my communications with Council Members Rush, Snyder and Waldref and their attorneys, Dalton, Delaney and Piccolo that I was not representing any client in the debate over police oversight. Mr. Delaney confirmed that understanding in front of me and others at the meeting we had together.

I can conceive of no scenario where the issue of police oversight would become part of either the criminal or civil court proceedings in the Zehm matter. Undoubtedly, most people injured by law enforcement would be in favor of police oversight, but that interest does not elevate it into a triable issue before a court unless someone could show a connection between the oversight process and the claimed injuries. Even if there was an allegation of a direct connection, the Constitution and RPC 4.2 would still give citizens, like me, the right to directly petition elected representatives for reform without restrictions, except for those narrowly tailored to preserve the right to free expression. There is no allegation in the Zehm case that civilian police oversight contributed to Mr. Zehm's injury or death, nor is oversight part of any defense. No party has petitioned the courts for any imposition of civilian police oversight as a remedy.

The Zehm family did suggest prior to filing suit that the City consider improved civilian police oversight as part of a package of police reforms that might make a financial settlement easier to reach. The suggestion was never made part of a quid pro quo offer of settlement and the City ended negotiations on the civil case just prior to plaintiffs filing suit in March of 2009. To my knowledge, there have been no further discussions regarding police oversight as a component of settlement. In fact, other than plaintiffs' offers to renew settlement negotiations, there have been no further substantive settlement discussions with the City. There is simply no direct connection

between the Council's latest efforts to improve police oversight and the Zehm case either in substance or in terms of ongoing settlement negotiations.

There are many factual allegations you make in your letter that I find incorrect but except for the following I will leave them for another day. When asked, I have provided my best thinking regarding reform of the police oversight system in Spokane. This is no less true when the person asking my opinion is a Member of the Spokane City Council. I have not offered that thinking as legal advice, purported to be representing Members as their lawyer, or encouraged them to disregard advice from their lawyers. Just the opposite -- I have encouraged them to engage with their legal council to ameliorate the problems raised by their constituents on a regular basis. This renewed engagement between the Council Members and their lawyers appears to have led to substantial public policy progress despite resistance from some members of the executive branch. This is the type of exchange of ideas on matters of public importance protected by 200 years of judicial interpretations of the First Amendment. Access to elected representatives is protected, even for lawyers. The jurisdictions that have considered this issue have recognized that the language in RPC 4.2, "or is authorized by law to do so," contemplates direct access by outside lawyers to government officials even when the governmental lawyers object. See *Ethics and the Law: Communicating with a represented Governmental Client*, Barrie Althoff, Bar News, June 2001, Washington State Bar Association. There is also substantial authority rejecting your interpretation of Rule 4.2 in the Commentary to the ABA Model Rules and the Restatement 3rd Law Governing Lawyers at Section 101.

I take from your letter that you and the City have given this lengthy consideration. This is not the first time your office has written me to request that I refrain from communication protected by the First Amendment and threatened an ethics complaint. I understand that you fully intend to file an ethics complaint against me if I do not comply with your requests. Consequently, I have written the Council's legal representative, Mr. Piccolo, of my reluctant decision to condition at least this initial response to your threat under the conditions that you have dictated. By doing so, I recognize and want you to know that your letter has imposed a substantial chill on my unimpeded access to these Council Members. It appears that your intention is to foreclose the further exercise of my access except under your terms to the detriment of myself, the Members and the citizenry who would benefit from the proposed reforms to independent police oversight. I request that you promptly withdraw your threat in writing so that the City does not become liable for that chill.

Sincerely,



BREEAN L. BEGGS

Enclosure

Cc: Mike Piccolo