

MARY E. RINALDI
LACKAWANNA COUNTY

Joseph Pilchesky
Petitioner

2008 OCT -9 A 9: 21
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY, PA
CIVIL ACTION – EQUITY

Vs.

Judy Gatelli, as President
Of City Council of the
City of Scranton,
And as an individual,
Respondent

07-CV-1838

RULE TO SHOW CAUSE WHY RESPONDENT GATELLI SHOULD NOT
BE ENJOINED FROM CONTINUING TO HAVE HER PRIVATE COUNTERCLAIM
AND PRIVATE DEFENSE RELATED LEGAL FEES PAID FOR THROUGH THE
CITY OF SCRANTON'S INSURANCE COVERAGE FOR PUBLIC OFFICIALS,
AND WHY SHE SHOULD NOT IMMEDIATELY REIMBURSE THE CITY OF
SCRANTON'S INSURANCE COMPANY FOR LEGAL FEES ALREADY
EXPENDED ON BEHALF OF HER DEFENSE AS A PRIVATE INDIVIDUAL AND
HER PRIVATE COUNTERCLAIM SEEKING COMPENSATORY DAMAGES AND
PUNITIVE DAMAGES

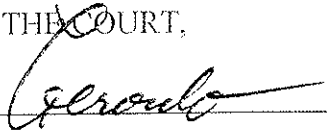
Rule Returnable

AND NOW, on this 9 day of Oct, 2008, upon consideration
of the foregoing petition, it is hereby ordered that:

1. A rule is issued upon the Respondent to show cause why the Petitioner is not entitled to the relief requested;
2. The Respondent shall file an answer to the petition within twenty (20) days;
3. If necessary, argument shall be held on November 5, 2008 in Courtroom T3D of the Lackawanna County Court of Common Pleas; and

4. Notice of entry of this Order shall be provided to all parties by the Petitioner.

BY THE COURT,



(J.)

MARY F. RINALDI
LACKAWANNA COUNTY

Joseph Pilchesky
Petitioner

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IN THE COURT OF COMMON PLEAS

OF LACKAWANNA COUNTY, PA

Vs.

CIVIL ACTION – EQUITY

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Of City Council of the
City of Scranton,
And as an individual,
Respondent

07-CV-1838

PETITION IN SUPPORT OF PETITIONER’S RULE TO SHOW CAUSE WHY
RESPONDENT GATELLI SHOULD NOT
BE ENJOINED FROM CONTINUING TO HAVE HER PRIVATE COUNTERCLAIM
AND PRIVATE DEFENSE RELATED LEGAL FEES PAID FOR THROUGH THE
CITY OF SCRANTON’S INSURANCE COVERAGE FOR PUBLIC OFFICIALS.
AND WHY SHE SHOULD NOT IMMEDIATELY REIMBURSE THE CITY OF
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EXPENDED ON BEHALF OF HER DEFENSE AS A PRIVATE INDIVIDUAL AND
HER PRIVATE COUNTERCLAIM SEEKING COMPENSATORY DAMAGES AND
PUNITIVE DAMAGES

1. On April 9, 2007 the Petitioner filed a Complaint against Judy Gatelli in her capacity as a Councilwoman for the City of Scranton and as an individual.
2. On May 24, 2007 the Respondent, Judy Gatelli, filed an Answer to the Complaint that included a private Counterclaim for damages.
3. Respondent’s Counterclaim as a PRIVATE individual includes:
 - a. Count I: A claim for defamation seeking in excess of \$50,000.00 and punitive damage;

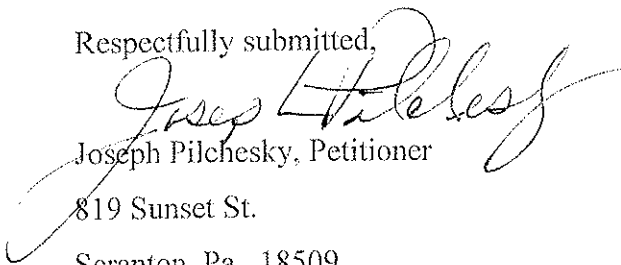
- b. Count II: A claim for Civil Conspiracy seeking in excess of \$50,000.00 and punitive damage;
 - c. Count III: A claim for Intentional Infliction of Emotional Distress seeking in excess of \$50,000.00 and punitive damage; and
 - d. Count IV: A claim for Abuse of Process seeking in excess of \$50,000.00 and punitive damage;
4. Respondent, as a public official, has properly been the beneficiary of legal services to defend against the Complaint, which legal services have been paid for by the City of Scranton's insurance carrier because Respondent was sued as a public official.
 5. Respondent, as a private individual, has improperly been the beneficiary of substantial free legal services as relates to a defense to the Complaint in which she has been sued for individual wrongdoing.
 6. Respondent, as a private individual, has also improperly been the beneficiary of substantial free legal services as the Counterclaim Plaintiff in the Counterclaim she filed against the Petitioner and approximately 102 John Does.
 7. The Respondent is attempting to financially gain as a private individual in a private Counterclaim action wherein her legal services are being paid for by the City of Scranton, or better put, by the taxpayers of the City of Scranton, since the insurance premium is paid directly from taxpayer revenues.
 8. It is a direct and blatant unethical conflict of interests for the Respondent to publicly represent the best interests of the taxpayers of the City of Scranton and simultaneously use taxpayer funded insurance coverage to attempt to privately collect approximately \$200,000.00 in compensatory damages and punitive damages of an amount yet to be determined.
 9. The purpose of the City of Scranton's insurance coverage for public officials who have been subjected to legal actions is to defend the public official in the capacity of a public official, and not to defend the public official as a private individual.

10. The purpose of the City of Scranton's insurance coverage for public officials who have been subjected to legal actions is to defend the public official in the capacity of a public official, and not to provide funds for legal services seeking private compensation through private counterclaims.
11. Respondent is an individually named defendant in the instant Complaint for misconduct outside of the scope of her obligations and duties as a public official and should not be allowed to attempt to privately benefit from insurance coverage paid for by taxpayer revenues.
12. It was unethical for the Respondent to have used taxpayer funded insurance coverage to initiate a private counterclaim that can result in the Respondent enjoying financial gain in her private capacity.
13. It was unethical for the Respondent to continue to use taxpayer funded insurance coverage to advance a private counterclaim that can result in the Respondent enjoying financial gain in her private capacity.
14. There is no language in the City of Scranton's insurance policy that provides any type or kind of liability coverage for a public official sued for any type or kind of misconduct that also provides that any private individuals may avail themselves to the privileges of such insurance coverage.
15. Respondent should be ordered to reimburse the City of Scranton, or its insurance carrier, for all fees and costs paid to any and all of the Respondent's legal counsel as relates to any and all legal services rendered regarding representing the Respondent in any private capacity as either a defendant or a counterclaim plaintiff since the Complaint was filed, and since the Answer/New Matter/Counterclaim was filed.
16. Respondent had no legal or ethical right as a private individual to use taxpayer funded insurance coverage to pursue her private financial interests through litigation.

17. It is a violation of the people's trust and confidence in the Respondent to allow her to continue to use taxpayer funded insurance coverage for personal and private gain, or the attempt thereof.
18. In fact, an appeal is pending to be filed in the Commonwealth Court regarding the disposition of a petition filed by the Respondent as a private individual, which appeal will likely travel to the Supreme Court, which legal costs representing the Respondent will be extremely expensive.
19. At all times relevant thereto, the Respondent knew, or should have known, that it was illegal and/or unethical to use taxpayer funded insurance coverage to pursue private financial interests relating to her private counterclaim as an individual and her defense as a private individual.
20. At all times relevant thereto, the Respondent knew, or should have known, that the taxpayers of the City of Scranton were being unethically taken advantage of relating to the Respondent's legal representation of her private counterclaim seeking private and personal gain in an amount exceeding \$200,000.00 and relating to her defense as a private individual.
21. The Respondent should pay for her own legal fees and costs relating to a counterclaim as a private individual seeking to privately and personally financially benefit.
22. Respondent should be immediately enjoined from continuing to have her legal fees paid by taxpayer funded insurance coverage relating to her private counterclaim and defense as a private individual.
23. The Court should direct the Respondent's legal counsel, regardless of how many there are, to appear at a hearing with copies of all bills, billing statements, vouchers or other statements that reflect how much the City of Scranton's insurance carrier has been paid, or is due payment, in defense of Respondent Gatelli in her private capacity of defendant and counterclaim plaintiff.

WHEREFORE, the Petitioner respectfully requests that the Respondent, Judy Gatelli, is immediately enjoined from continuing to use the City of Scranton's insurance coverage for public officials, which is taxpayer provided for defending only public officials, for her own defense as a private individual and for her pursuit of private financial gain as a private individual as the Counterclaim Plaintiff in this instant action. Furthermore, Petitioner respectfully requests that Respondent Gatelli shall reimburse the City of Scranton, or its insurance carrier, within thirty days from the date of the court's order, for all legal fees and costs already paid on behalf of defending Respondent Gatelli as an individual defendant and representing her private interests as a Counterclaim Plaintiff. Petitioner requests that the court set a hearing date to determine all of the legal fees and costs already paid to all legal counsel to date on behalf of Respondent Gatelli in her private and official capacity as either Defendant or Counterclaim Plaintiff.

Respectfully submitted,


Joseph Pilchesky, Petitioner

819 Sunset St.

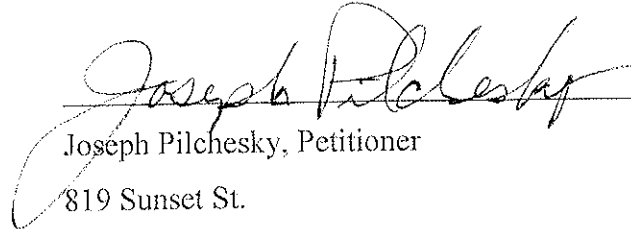
Scranton, Pa. 18509

570-341-8005

VERIFICATION

This is to verify that the statements made herein are true and correct to the best of my information, belief and knowledge. I understand that my statements are subject to 18 Pa. C.S.A., § 4904, relating to Unsworn Falsification to Authorities.

October 9th, 2008

A handwritten signature in cursive script, reading "Joseph Pilchesky", written over a horizontal line. The signature is fluid and somewhat stylized, with the first letter 'J' being particularly large and looping.

Joseph Pilchesky, Petitioner

819 Sunset St.

Scranton, Pa. 18509

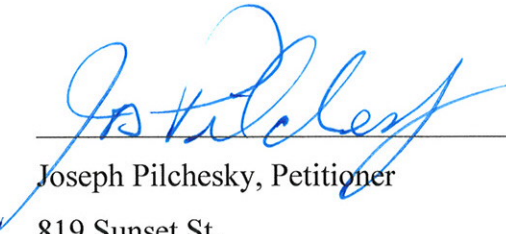
570-341-8005

CERTIFICATE OF SERVICE

This is to certify that I, Joseph Pilchesky, Petitioner in the foregoing Rule to Show Cause and supportive petition, did serve a true and correct copy of the same upon the parties listed below on this 9th day of October, 2008 by placing the same into the U.S. Mail, first class prepaid postage:

Atty. George Reihner
140 Adams Ave.
Scranton, Pa. 18503

Paul Levy, Esq.
Public Citizen Litigation Group
1600-20th Street, N.W.
Washington DC 20009



Joseph Pilchesky, Petitioner
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Scranton, Pa. 18509
570-341-8005

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ORDER

AND NOW, on this _____ day of _____, 2008 upon consideration of the Petitioner's Rule to Show Cause and Petition in support thereof, it is hereby Ordered and Decreed that the Petition is Granted. Respondent Judy Gatelli is forthwith enjoined from using the City of Scranton's insurance company for any private representation as either a defendant or a counterclaim plaintiff. Furthermore, Respondent Judy Gatelli shall reimburse the City of Scranton's insurance company within thirty days for any and all legal fees and costs paid thus far to any and all legal counsel relating to her legal representation as a defendant and/or counterclaim plaintiff in a private capacity under the above-captioned docket number. Furthermore, the Court Administrator shall schedule a hearing to determine how much has been paid to any and all legal counsel representing the Respondent as a defendant or counterclaim plaintiff in a private capacity, at which hearing, all legal counsel shall provide copies of all fees and costs paid thus far by any insurance company and for fees and costs still owed.

BY THE COURT,

_____(J.)