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22 November 2015

Donna Jalbert Patalano, Chair
State Board of Bar Overseers
99 High Street
Boston, MA 02114

In Re: Appeal from an Adverse Ruling by
a First Assistant Bar Counsel

Dear Chair Patalano:

On 28 October 2015 I filed a complaint alleging fraud and dishonesty against attorney Sandra L. Hautanen, Assistant District Attorney for the Middle District. The complaint is a specific and detailed narrative of her offending acts. I could not provide xerox documents because the prison librarian copy only original papers addressed to the court. I had typed extra copies to serve upon ADA Hautanen, which prompted no response from her as if she was unable to contest the alleged facts. I am exercising the right to appeal from that adverse ruling, which a First Assistant Bar Counsel asserted was based on a failure to effort him or her "documentation in support of these allegations."

In view of the complaint's specificity with regard to the exact dates and forums ADA Hautanen falsely testified under oath as well as a state prison standing policy prohibiting xeroxes except for documents addressed to the courts, fairness dictates that a reasonable accomodation be made to the injured party. The First Assistant Bar Counsel should be able to act creatively to resolve this matter. It may be expedient if ADA Hautanen answered these charges in writing and provided the Bar Counsel with all relevant rebuttal xeroxes. Alternatively, Bar Counsel may request in writing that the prison superintendent waive the policy in order for me to be responsive.

To reiterate the allegations against ADA Hautanen in general terms, the following need to be said. In 22 April 2010 a state parole board member openly challenged the necessity of another 5-years in prison in light of evidence that a pretrial 2-year proposal had been offered. Peter L. Ettenberg, the trial attorney, provided an affidavit attesting to the truth and veracity of that plea. Moreover, a pretrial letter from the trial

prosecutor retrieved from a former First Assistant Clerk of the Probate and Family Court in Worcester attested to the pretrial plea. In April 2010 ADA Hautanen had no objection neither to Ettenberg's affidavit nor the letter from the prosecutor. It was not until a year later, after the defense filed a motion for a new trial alleging fraud and dishonesty relating to the provenance of DNA samples earlier provided for testing, that ADA Hautanen resurrected the pretrial letter to create a argument of fraud herself. She responded in a way that left many scratching their heads. She brought the legal process to a standstill. The court had ordered a hearing for Friday 9 September 2011 at 2pm. She filed a motion to dismiss due to fraud and asked the clerk of court to schedule that hearing for 10am that Friday morning. In her court papers ADA Hautanen asserts that a defense reference to a 2-year plea in its ninth motion for a new trial is false and any evidence referring to such plea is fraudulent. The prosecution never offered a plea bargain proposal, she argues, because the victim insisted on testifying at trial. The motion judge, crediting her claim, dismissed the defense's bid for new trial.

After the motion judge issued his dismissal on the basis that I had engaged in some "unconscionable scheme" to defraud the court, ADA Hautanen again testified before the state parole board on 24 April 2015. It was a different panel of appointed members. On that occasion, under oath, she testified that a plea had indeed been dismissed with defense counsel prior to trial, a version of events that is totally contrary to those she had previously testified. (A DVD video and audio tape of that 24 April 2015 parole hearing is readily available through defense attorney John H. LaChance or directly from the parole staff. I very much doubt ADA Hautanen will ever dispute this characterization.)

The First Assistant Bar Counsel, I believe, incorrectly concludes that ADA Hautanen's false "statements about plea negotiation would not be material in a parole hearing. Thus, no formal investigation has been commenced at this time." However, the truthfulness of such a plea not only informed the good character and trustworthiness of the prospective parolee, character and trust are significant factors in determining parole suitability, but the board's legislative mandate to assess whether the penological objectives of the sentence had been met after 33-years in prison.

Finally, ADA Hautanen should correct the false statements she made in court, which erroneously led a superior court judge to dismiss a motion for new trial due to fraud, with the same clarity and intense advocacy that she corrected them before the state parole board on 24 April 2015. The trial prosecutor conveyed a plea offer prior to trial.

Sincerely

Ben LaGuer

OFFICE OF THE BAR COUNSEL
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT
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CONSTANCE V. VECCHIONE
BAR COUNSEL

November 13, 2015

LEGAL CORRESPONDENCE

Mr. Ben LaGuer, #W40280
NCCI Gardner
500 Colony Road
Gardner, MA 01440-0466

Dear Mr. LaGuer:

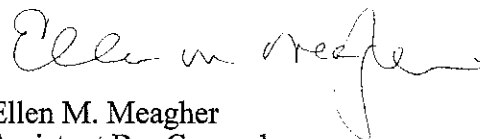
Your complaint against Attorney Sandra Hautenan has been reviewed by a first assistant bar counsel. Based on that assessment, a determination has been made that this office cannot be of assistance to you and that, pursuant to Supreme Judicial Court Rule 4:01, §§ 7(1) and 7(2)(a), your complaint will not be investigated further.

Your grievance alleges claims of prosecutorial misconduct. Such claims must in the first instance be addressed by the court. This office cannot provide legal advice or representation, nor can we assist you with your case. We suggest you consult an attorney, and if any issues you raise to the court result in a decision suggesting attorney misconduct, we ask that you bring this matter to our attention again at that time.

Your letter contains general allegations of fraud and dishonesty, but you have not provided documentation in support of these allegations. Further statements about pre-trial plea negotiations would not be material in a parole hearing. Thus, no formal investigation has been commenced at this time.

Enclosed please find a copy of a letter from the Chair of the Board of Bar Overseers advising you of your right to have this decision reviewed by a member of the Board.

Very truly yours,



Ellen M. Meagher
Assistant Bar Counsel

EMM/afm
Enclosure

BOARD OF BAR OVERSEERS

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JEFFREY D. WOOLF
ASSISTANT GENERAL COUNSEL
MERLE R. HASS

Dear Claimant:

As indicated by the enclosed letter, your grievance has been closed after investigation by the Office of Bar Counsel. This letter is written to inform you of your right, under the Rules of the Board of Bar Overseers, to request review of that decision by a member of the Board. The Board has a staff of its own and functions independently of the Office of Bar Counsel.

If you are dissatisfied with Bar Counsel's decision regarding your grievance, you may request that an independent review be made of the decision by a member of the Board. In that event, Bar Counsel will transmit your file to the office of the Board. Upon concluding his or her review, the Board member may conclude that Bar Counsel was correct in closing the file. If so, that will end the matter, since the Supreme Judicial Court has held that there is no appeal from a decision by the Board not to bring disciplinary charges against an attorney. Binns v. Board of Bar Overseers, 1 Mass. Att'y. Disc. R. 27, 28 (1976). Alternatively, the reviewing Board member may direct Bar Counsel to bring disciplinary charges or to reopen the file for further investigation.

If you wish the Board to review your complaint, you must file a written request no later than fourteen (14) days after the date of the enclosed letter from the Office of Bar Counsel. Your request for Board review should be sent to Office of Bar Counsel, Review Department, 99 High Street, Boston, Massachusetts 02110.

Very truly yours,



Donna Jalbert Patalano
Chair