

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

2 Civil Action No. 02-CV-01950-EWN

3 KAY SIEVERDING, et al.,

4 Plaintiffs,

5 vs.

6 COLORADO BAR ASSOCIATION, et al.,

7 Defendants.

8 _____
9 REPORTER'S TRANSCRIPT
10 MOTION HEARING
11 _____

10 Proceedings before the HONORABLE EDWARD W.
11 NOTTINGHAM, Judge, United States District Court for the
12 District of Colorado, commencing at 10:37 a.m., on the 14th day
13 of December, 2007, in Courtroom A201, United States Courthouse,
14 Denver, Colorado.

13 APPEARANCES

14 For the Plaintiffs DAVID SIEVERDING, PRO SE

15 For the Defendants RICHARD B. CASCHETTE, ESQ.

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Proceedings Reported by Mechanical Stenography
Transcription Produced via Computer

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P R O C E E D I N G S

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THE COURT: Case 02-cv-1950, David Sieverding v. The

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Colorado Bar Association and others.

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I'll take the appearances, starting with you,

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Mr. Sieverding, please.

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MR. SIEVERDING: I'm David Sieverding.

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THE COURT: Custom is to stand in this court.

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MR. SIEVERDING: I'm sorry. I'm David Sieverding.

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MR. BROUGHAM: I'm David Brougham appearing on behalf

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of the City of Steamboat Springs and the district attorneys up

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there.

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MR. HUFF: Your Honor, Brett Huff on behalf of the

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Colorado Bar Association.

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MR. McCONNELL: Michael T. McConnell on behalf of the

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Klauzer-Tremaine defendants and Jane Bennett.

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MR. CASCHETTE: Good morning, Your Honor. Rich

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Caschette on behalf of the Steamboat Pilot and Suzanne

18 Schlicht.

19 THE COURT: This matter comes before the Court on
20 several motions filed by Mr. Sieverding.

21 Mr. Sieverding, tell me what it is that you want me to
22 do today.

23 MR. SIEVERDING: Well, I would like --

24 THE COURT: No, stand up and go to the podium, please.

25 MR. SIEVERDING: I'm sorry.

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1 I would like both for a recognition that these things
2 happened, that they engaged in these activities, ex parte
3 communications and so on and so forth, and also so that it
4 could be taken to the attorney regulation council, and also a
5 recommendation for filing of default and recommendation for
6 striking Magistrate Schlatter's report and recommendation
7 because of the ex parte communications.

8 THE COURT: Why do you want a default?

9 MR. SIEVERDING: Because of the ex parte
10 communications.

11 Basically, what it would do is the -- if -- if that
12 was struck, then it would basically put the defendants in

13 default, because there was motions for summary judgment that
14 were not responded to and --

15 THE COURT: You mean, your --

16 MR. SIEVERDING: We filed, motions for summary
17 judgment that we filed that were -- that received no response
18 from the defendants, so they would be in default on those
19 motions.

20 THE COURT: Well, this started out as a motion under
21 U.S. Judicial Canon 3B for this court somehow to refer this to
22 the state disciplinary board, right?

23 MR. SIEVERDING: Yes, it did.

24 THE COURT: Well, you can do that. You can do it.
25 You can file a complaint against any of these gentlemen with

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1 the state regulatory council. And it's my impression that you
2 have. Have you not?

3 MR. SIEVERDING: Yes, we have.

4 THE COURT: Why does this court need to do it? The
5 regulatory council has all the resources it needs to make
6 determinations, and does regularly make determinations
7 concerning whether attorneys have behaved ethically.

8 MR. SIEVERDING: Well, my first contact with the

9 attorney regulation council, I was still in Steamboat. They
10 said that they needed a finding from a court of law before they
11 would act. That's what Matt Samuelson told me.

12 THE COURT: Well, I don't know the context in which
13 those words were spoken, and I don't know what you had asked,
14 and I don't know what the problem was. But my understanding of
15 the Colorado rules of attorney conduct is that upon the filing
16 of a complaint, they do whatever investigation they need to
17 have done, and they make whatever findings they need to have
18 made, and they issue whatever orders they need. They don't
19 need a recommendation from this court.

20 You know, if that is what he said, he's wrong. And I
21 suspect, perhaps, Mr. Sieverding -- with due respect -- that
22 you may be misinterpreting what he said, given my reading of
23 your pleadings, because I think that you don't always
24 understand what is going on. And I mean no -- I don't mean
25 that in a pejorative way. You're just untrained in the law.

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1 Did you write these pleadings, by the way?

2 MR. SIEVERDING: Yes.

3 THE COURT: Your wife had no input?

4 MR. SIEVERDING: No, I -- well, she did some research,
5 and I -- I got some of the cases she had. I also was able to
6 read through her previous work and find cases that she cited
7 and law that she cited, and also from Cornell's website, and
8 from a --

9 THE COURT: What do you mean, Cornell's website?

10 MR. SIEVERDING: Cornell has a website which has a
11 listing of the U.S. Code. And also there is some from the
12 Colorado code which is available at the Wisconsin law library.

13 THE COURT: All right. So those are the three things
14 you want, you want this court to make a finding that there were
15 ex parte communications, you want the Court to enter a default
16 judgment against the defendants because of the ex parte
17 communications, and you want the Court to strike the magistrate
18 judge's recommendation because of the ex parte communications?

19 MR. SIEVERDING: Yes.

20 THE COURT: All right.

21 Now, I've received a response filed by counsel for, I
22 guess, the Steamboat Springs defendants, namely, Mr. Brougham.

23 Mr. Brougham, here is the only question that I have:

24 I read through all of this stuff. And the one thing
25 that struck me as at least badly worded was an exhibit

1 purporting to be a bill from Lettunich & Vanderbloemen -- and I
2 may be mispronouncing that -- which in an entry on the 12th
3 of February, 2003 talks about a conference call to Magistrate
4 Schlatter. And it's not clear whether that was a conference
5 call with the parties present or what.

6 Do you know what I'm talking about?

7 MR. BROUGHAM: Yes, Your Honor.

8 THE COURT: I know that's very specific.

9 MR. BROUGHAM: I --

10 THE COURT: The other thing -- where you're talking
11 with the clerk, I understand that. But this one, I need a bit
12 of explanation.

13 MR. BROUGHAM: Yes, Your Honor.

14 It never happened, as was written by Mr. Lettunich.

15 Of course, I've seen this bill used 20 times by the woman who I
16 believe really wrote all of this stuff, submitted to this
17 court, to the Circuit, to the United States Attorney's Office,
18 requesting filing of charges, to the FBI. It's been filed in
19 other states.

20 I obviously don't know what happened that day other
21 than what my bill reflects. But my bill reflects that I called
22 the court clerk downstairs with a question, and I frequently

23 did. As I -- you know, I realize what I put in my response is
24 gross hearsay, but --

25 THE COURT: But this is an exhibit on the letterhead

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1 of Lettunich & Vanderbloemen, suggesting it's not your bill
2 anyway.

3 MR. BROUGHAM: Correct. They have concocted that
4 piece of evidence by saying that my verification from my
5 billing verified that billing.

6 THE COURT: Well, I understand that, but --

7 MR. BROUGHAM: Which I never did.

8 THE COURT: But I don't understand why somebody from
9 that law firm had the entry "conference call to Magistrate
10 Schlatter."

11 MR. BROUGHAM: He doesn't either, the author of that.
12 He -- well, he's a city attorney in Steamboat Springs. He used
13 to be one of our partners. We had an office there 30 years
14 ago. I used to work there. And he's never been in federal
15 court. He -- he doesn't remember why he wrote that, but it
16 just didn't happen.

17 The only -- and as an officer of the court, if I'm --

18 I suppose I'm speaking sort of under oath, if you've got a
19 couple of minutes about an earlier reference that they've made
20 to Magistrate Schlatter saying he had talked to me.

21 When all of this started six years ago, the
22 Sieverdings filed the lawsuit that you dismissed three years
23 ago in Steamboat Springs in the state court. And they didn't
24 like what Judge Doucette was doing, they removed it, or she
25 removed it, to this court. Judge Matsch sent it back within 24

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1 hours.

2 And it languished there, and I was then retained by
3 the city to do whatever might need -- might need to be done.
4 At the same time Mrs. Sieverding filed the same lawsuit in the
5 federal court in Wisconsin. And the City was notified of that
6 fact, and I was brought into it with a question about whether
7 we should do something about the Wisconsin lawsuit.

8 Now, this is before the case ever came to this court
9 that's the subject of 02-1950.

10 And in the middle of that Wisconsin discussion about
11 whether we should do something back there when nobody had been
12 served, I was coming with an associate to show her how to do a
13 scheduling conference in front of Magistrate Schlatter. And I

14 don't know who the judge was, but the question was, should we
15 bring our calendars? Did the -- did the Article III judge who
16 was handling that case 2000 -- early 2003 -- 2, maybe, did he
17 want -- did he set trials at the scheduling conference?

18 So I said, I don't know, and I called Shawn,
19 Magistrate Schlatter's secretary, and I said, does Judge so and
20 so set trials at the scheduling conference? Some of you do,
21 some of you don't. And she said, I don't know, why don't you
22 ask him. And he said, yes or no, I forget.

23 But he said, say, I'm reading this 400 paragraph
24 lawsuit, and I see your name in it. I just got it. And it's
25 the one that led to 02-1950. And I said, yeah, I've seen it

1 several times. He said, are you going to represent City of
2 Steamboat Springs? And I said yes. He said, well, what I
3 think I'm going to do is set a status conference, so I'll have
4 Shawn clear a date through you.

5 That is the only conversation I've ever had with
6 Magistrate Schlatter about this case. I never did after that.

7 My former partner up in Steamboat and present -- he
8 and I are pretty good friends -- he said, I don't know why I

9 wrote that down. I thought that's who we were talking to.

10 Actually, you may recall, or you may not, one day I
11 was downstairs, I don't know, two or three years ago, talking
12 to Robert. And they had brought out the Sieverding pleadings,
13 which are about this high (indicating). And you walked by and
14 said something to me. And I said, I'm working on this thing,
15 which I just -- just got assigned to you. And you said, yeah,
16 or you walked off.

17 But, anyway, I was in the habit -- I did not catalog
18 this nonsense. And I would get several pleadings per day. And
19 I had a stack of them and just didn't -- you know, I couldn't
20 reference something by number. We're up to, what, 1,060 now?

21 In any event, I was in the habit of talking to Robert
22 and Kathy, who retired a couple of years ago, she was on top of
23 this, saying, where are we, what has been filed lately? And I
24 frequently talked to the appellate clerk, I forget what her
25 name was, who had to gather all this nonsense and send it

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1 across the street. So I talked probably two dozen times to
2 staff downstairs.

3 THE COURT: All right.

4 MR. BROUGHAM: But I never talked to Schlatter, other

5 than that first time, for what that's worth.

6 THE COURT: All right.

7 MR. BROUGHAM: But I've been grieved over this. I
8 verified that yesterday with the attorney regulatory council,
9 two years ago, a year and a half after this billing, after she
10 discovered that and began to wave it around a lot.

11 So -- you know, what we've discussed, the four of us
12 here today, is, let's put an end to this thing. Our attorneys'
13 fees collectively now are a third of a million dollars. We've
14 got a \$100,000 judgment from you that has been filed as a lien
15 in Wisconsin. It's uncollectible. We've had counsel there.
16 We've done the Rule 69 stuff. They either don't have assets,
17 or they've got them hidden.

18 And the bleeding out ought to stop. We hope it is
19 today.

20 You know, during the early stages -- earlier stages,
21 when there were only about 400 pleadings, Magistrate
22 Schlatter -- there was then a pend -- there were pending
23 dispositive motions from all of us, he ordered the clerk not to
24 accept anything further until you ruled on this. And they were
25 sending things quite frequently to the clerk that just got put

1 back in the mail and sent back to them.

2 And if it makes sense today, I'd -- I'm sure you have
3 that power. I don't think the Circuit would interfere with
4 that. We'd like to have this be the last time we ever have to
5 charge anybody for this nonsense. And they just keep on filing
6 things.

7 And the -- I get calls -- I've had several calls from
8 lawyers and private citizens about what she's saying about me
9 on the internet and, you know, without getting into it, about
10 you, and --

11 THE COURT: I know that.

12 MR. BROUGHAM: This woman is demented, and there we
13 are.

14 THE COURT: Well, we can't solve every issue that's
15 lurking out here. What I can do is deal with these motions.

16 The motions are all denied.

17 First, the Court finds that it has no authority and no
18 reason to be making a finding for purposes of furthering any
19 disciplinary process against any attorney. The Court sees
20 nothing in this record which would cause it to refer the case
21 to the disciplinary authorities.

22 The Sieverdings, both Mrs. Sieverding and

23 Mr. Sieverding, have the power under the Colorado rules to
24 initiate grievances against attorneys. As I said in colloquy,
25 the regulatory council has resources and personnel who can

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1 investigate those matters. And notwithstanding
2 Mr. Sieverding's suggestion to the contrary, the Court is
3 unaware of any rule that requires the Court to enter an order
4 before the disciplinary authorities can act.

5 As to the remaining relief, the Court has reviewed the
6 extensive pleadings filed by Mr. Sieverding in this matter and
7 has reviewed the response filed by Mr. Brougham. And implicit
8 in that review has been a review of the attached documents.

9 Mr. Sieverding is incorrect when he asserts that every
10 time an attorney talks with the court clerk or a judge's clerk,
11 that is a prohibited ex parte communication. What is
12 prohibited by the rules is a communication regarding the merits
13 of the case, either the substantive merits or the procedural
14 merits.

15 If a party talks to a court clerk to get information
16 or if a party talks to the judge's clerk to see whether
17 something is scheduled, that is a matter which occurs with
18 regularity in every case in every court, and it is not

19 prohibited.

20 Mr. Brougham has brought up a conversation that he had
21 directly with Magistrate Judge Schlatter. That begins to cause
22 some concern to the Court. But the Court sees nothing wrong
23 with that communication, inasmuch as the only thing that is
24 discussed was the possible setting of a status conference. And
25 certainly the attorney could have had a conversation regarding

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1 the setting of a status conference with the judge's clerk. And
2 in this instance, the Court sees no harm and no foul,
3 essentially, to use a colloquialism, in the fact that
4 Magistrate Judge Schlatter announced an intention to set the
5 conference. The Court doesn't see how the Sieverdings could
6 possibly have been prejudiced by the announcement that the
7 magistrate judge was going to set a conference.

8 Because I find -- and the other thing that concerns
9 the Court is the stray document on the billing stationery of a
10 firm in Steamboat Springs where one entry records supposedly a
11 conference call to Magistrate Judge Schlatter.

12 The representation has been that the attorney in
13 question has never been in federal court. This was one

14 isolated instance, if it's taken at face value, with a call to
15 Magistrate Judge Schlatter. There is nothing in here that
16 indicates that the conference call would have been prohibited.

17 And the use of the term "conference call" suggests to
18 the Court that both sides might have been present, so I don't
19 know what the attorney making the entry contemplated. It
20 doesn't indicate in any way what was discussed. And the Court
21 is unable to conclude by a preponderance of the evidence that
22 this sole stray entry constitutes an improper ex parte
23 communication.

24 In other words, Mr. Sieverding, you haven't carried
25 your burden of proof. Even if there were ex parte

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1 communications in this case, the Court sees nothing in the
2 communications which would justify overturning the entire
3 history of this case and striking the magistrate judge's
4 recommendation and entering a default.

5 This court independently reviewed the magistrate
6 judge's recommendation. Under the statute that is a de novo
7 review, meaning, I don't defer to the magistrate judge; I don't
8 decide whether he was clearly erroneous; I review it myself.

9 So whatever happened before the magistrate judge is

10 essentially non-prejudicial and irrelevant. This court
11 reviewed the matter and entered orders that it thought were
12 appropriate. There has been no suggestion, nor could there be,
13 in my opinion, of any ex parte communication that any attorney
14 has had with me, this judge, district judge, except, I gather,
15 by the internet. And when Mrs. Sieverding wishes to come into
16 court and make that allegation, I guess we'll deal with it
17 then.

18 Mr. Sieverding, it is my view that in this litigation
19 you have been less obstreperous than your wife. And for that
20 reason, I'm holding this hearing. I'm letting you have your
21 say. I think you are incorrect. I disagree with you. You are
22 free to take that to the Court of Appeals if you want to, but
23 don't continue to pepper this court with motions.

24 Do you understand what I'm saying to you?

25 MR. SIEVERDING: Yes, I do.

15

1 Yes, I do.

2 THE COURT: So Nos. 1034, 1038 and 1049 are all
3 denied.

4 Court will be in recess.

5 (Hearing concluded at 10:59 a.m.)

6 REPORTER'S CERTIFICATE

7

8 I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

9

10 Dated at Denver, Colorado, this 14th day of December,

11 2007.

12 s/Therese Lindblom

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Therese Lindblom,CSR,RMR,CRR

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