

Rockingham County

STATE OF NEW HAMPSHIRE

Portsmouth District Court

Order

State v. Chace, Kristen

03 -CR-2342

After a Sanction hearing, at which the State was represented by Deputy County Attorney Tom Reid and the defendant by Attorney Andrew Cotrupi and consistent with the Supreme Court's ruling of remand (State v. Chace, August 26, 2004) the Court orders the following:

A fine of \$5000 shall be suspended, conditioned upon the following:

By June 1, 2005 Deputy Attorney Reid shall file with this court a list of all attorneys of the Rockingham County Attorney's office, their dates of admission to the bar, their N.H. bar numbers and proof of successful completion by each of not less than a 2.0 hour live or taped continuing legal education seminar on the subject of prosecutorial ethics.

The seminar must meet the NHBA criteria for CUE ethics credit and must be taken between 9/1/04 and 6/1/05. All members of the office must furnish such proof, failing which each shall be personally responsible (not the County) for a pro-rata share of the suspended fine.

Date 12/22/04

So ordered.
S. DeVries
Signature
Presiding JusticCec

STATE OF NEW HAMPSHIRE

Rockingham County

Portsmouth District Court

State v. Chace. Kristen

03-CR-2342

Order on State's Motion to Reconsider

In State v. Chace, _____N.H._____, 8/26/04, our Supreme Court reversed the dismissal by this District Court of a Driving Under the Influence charge, remanded the case to the District Court for trial and authorized "the trial court...consider whether...a lesser curative measure or sanction is warranted...". In accordance with the Supreme Court's ruling, this court held a sanction hearing on 10/26/04 and a new trial was scheduled for 12/17/04. (1)

On 12/22/04, this Court issued a ruling on the issue of sanctions. The State herein seeks reconsideration of that order. The crux of the State's argument is that the Court exceeded its jurisdiction by imposing a required educational component on ALL the lawyers of the Rockingham County Attorney's office, when, it is argued, only a few have district court responsibility.

Despite what is alleged in the State's Motion, paragraphs 38-52, this Court has had several attorneys from the Rockingham County Attorney's Office appear on behalf of the State. (2) The Court is not privy to how assistant county attorneys are assigned to their respective duties. Regardless, their ethical duties as prosecutors do not change based on the courts in which they appear.

1 At trial, Attorney Bailey appeared for the State for the first time in this matter. Ms. Chace was present with her attorney and witnesses ready for trial. The State was not prepared for trial as the principal witness, the arresting officer was not present. Defendants' Motion to Dismiss was granted.

2 For example, Attorneys Harrington, Phipps, Osborne, Diaz, Shepherd, Cirulli, Jordan, Bailey, Reid, Reams and Gardner have all represented the State in the District Court during the pendency of this matter.

The sanction imposed by this Court is no greater a requirement than what every attorney admitted to the practice of law in the State of New Hampshire must satisfy annually. (NHMCL- Rule 53).

While it is not suggested that each county attorney has engaged in conduct requiring sanction, there appears to be a pattern within the office that has resulted in confusion, inaccuracy, inconsistency and unfairness to the accused.

Having reviewed the complete record of this case, in an effort to prevent any further "circumvention of constitutional rights", State v. Chace, arid to ensure that professional conduct provisions, e.g., sections 3.8, 4.1 (a), 5.4 (C), and 8.4, are not compromised, this Court determined that the attorneys within the office could benefit from a course on prosecutorial ethics. The measure was imposed pursuant to the Court's "authority to curb the State's discretion where it is used to inflict confusion or other unfair prejudice..." Chace, quoting State v. Courtemarche, 142 N.H. 772,774.

The Court notes a proposed sanction order, albeit somewhat different in form but similar in substance, regarding professional education, was made by Attorney Cotrupi at the 10/26/04 sanction hearing to which Attorney Reid raised no objection. As noted in the Defendant's objection to this motion, apparently the State offered a like resolution in its argument before the Supreme Court. The sanction imposed here is not significantly different than what was apparently contemplated by the State.

The suspended fine portion was imposed to provide compliance incentive within the prescribed period of time. For the reasons set forth in defendant's objection, the suspended fine portion of the order shall be **vacated**.

A lawyer who is no longer a member of the office is not subject to this order.

The State's Motion raises several disputable allegations none of which the Court will herein address as these are unnecessary to address in disposition of the substantive issue raised.

Prior orders shall be modified in accordance herewith. Defendant's request to withdraw is **granted**. Case shall be recaptioned In Re: Office of Rockingham County Attorney.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0378, Petition of Rockingham County Attorney, the court on June 1, 2005, issued the following order:

On May 26, 2005, the Rockingham County Attorney filed a petition for writ of prohibition seeking review of a decision of the Portsmouth District Court, which imposed a fine of \$5000 on the attorneys working for the Rockingham County Attorney's Office. The court notes that a copy of the petition was served on the Attorney General.

A petition for writ of prohibition is used to prevent subordinate courts or other tribunals from usurping or exercising jurisdiction with which they are not vested. Petition of Cigna Healthcare, 146 N.H. 683, 687 (2001). The court exercises its discretionary authority to issue such writs "with caution and forbearance and only when the right to relief is clear." *Id.* at 687 (citation omitted). A petition for a writ of prohibition should be made with reasonable promptness after the entry of the order sought to be reviewed. State ex rel. Petry v. Madison County Superior Court Div. No. 3, 573 N.E.2d 884, 885 (Ind. 1991); see also Wood v. General Electric Co., 119 N.H. 285 (1979) (Supreme Court will not exercise discretion to grant writ of certiorari when petition was filed an unreasonable length of time after decision).

In this case, the clerk's notice of the district court's decision imposing the fine is dated December 23, 2004. A motion to reconsider this ruling was filed, which was denied by the district court. The clerk's notice of the decision on the motion to reconsider is dated February 28, 2005. The petition for writ of prohibition was filed on May 26, 2005, 87 days after the issuance of the district court's order denying the motion to reconsider.

On or before June 13, 2005, the Rockingham County Attorney shall file a memorandum addressing whether the petition for writ of prohibition should be denied on the grounds that it was not filed with reasonable promptness after the district court's February 28, 2005 order. By the same date, the Attorney General shall file a memorandum addressing this issue on behalf of the Portsmouth District Court.

The district court's orders of December 23, 2004 and February 28, 2005 are stayed pending further order of this court.

Nadeau, Dalianis, Duggan and Galway, JJ., concurred.

In Case No. 2005-0378, Petition of Rockingham County Attorney, the court on June 1, 2005, issued the following order:

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**Eileen For,
Clerk**

Distribution:

Portsmouth District Court #03-CR-02342

Honorable Sharon Devries

James Reams, Esquire

Thomas F. Reid, Esquire

Susan McGinnis, Esquire

Andrew Cotrupi, Esquire

File

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0378, Petition of Rockingham County Attorney, the court on July 14, 2005 issued the following order:

A petition for a writ of prohibition should be made with reasonable promptness after the entry of the order sought to be reviewed. **State ex rel Petry v. Madison County Superior Court Div. No. 3**, 573 N.E.2d 884, 885 (Ind. 1991); see also Wood v General Electric. Co., 119 N.H. 285 (1979) (Supreme Court will not exercise discretion to grant writ of certiorari when petition was filed an unreasonable length of time after decision). In this case, the petition for writ of prohibition was filed 87 days after the issuance of the district court's order denying the motion to reconsider.

The petitioner having presented no good cause to waive the untimeliness of the petition, the petition for writ of prohibition is denied.

Petition denied.

Nadeau, Dalianis, Duggan and Galway, JJ., concurred.

**Eileen Fox,
Clerk**

Distribution:
Portsmouth District Court #03-CR-02342
Honorable Sharon Devries
James Reams, Esquire
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Richard Bell, Esquire
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File