

HOTLINE CASE

2008-09 May, 2008

Complaint – Anonymous call from an attorney complaining about Council Member Art Shad being represented by Paul Harden in a civil suit. The person had an inquiry over whether it was legal for a lobbyist to represent a council person in a lawsuit. (See attached Times Union articles for background on the situation. It was an incident involving a dog and a dispute with attorney Tim Kelly.)

The following actions were taken by the Ethics Officer:

1. Sam Jacobsen, Art Shad's attorney in the matter was interviewed. Steve Rohan, General Counsel's office was on the phone call. Mr. Jacobsen stated that he was Art Shad's attorney in the civil case with Mr. Kelly; no legal work was done on the case by Paul Harden. Paul Harden did talk to Mr. Kelly and Mr. Shad before Sam was hired to represent Mr. Shad, as he was friends with both men. In Mr. Jacobsen's opinion, Mr. Harden was trying to "smooth things over" before they got to a lawsuit. He was trying to help out as a "peacemaker". When that did not work, Mr. Jacobsen was hired as the attorney on the case. He said that Paul Harden was not acting as a lawyer—no offers or compromises were relayed.
2. The Ethics Officer talked with CM Art Shad. He said that Sam Jacobsen was his lawyer. He knows Paul Harden made a few calls to Tim Kelly but he did not ask him to do this.
3. The Ethics Officer talked with Tim Kelly, who stated he was under a confidentiality agreement about the case. (The case has settled.) He said he plays golf with Paul Harden and did talk to him prior to both parties hiring attorneys. He was unable to talk about any of the details of the case.
4. Steve Rohan and the Ethics Officer called the State Ethics Commission to discuss the law pertinent to this type of situation. According to legal counsel of the State Ethics Commission, the pivotal question would be "is a fee normally charged for the service or, is the person doing the act as a favor in a friendship capacity? Did the elected official "knowingly receive a gift"? We were also told that it is significant to look at what the elected official **actually did receive**. (In this case, whatever conversations took place did not end up in the matter being resolved and the lawsuits were filed anyway.)

Comments

The evidence available shows that in this case, Paul Harden did not legally represent Council Member Shad. What he did do, according to the information obtained, was to make phone calls to a friend of his (Tim Kelly) and try to be the "peacemaker". This effort failed as both parties sued each other and hired attorneys. Using the criteria discussed in #4 above, there is no proof that Council Member Shad received anything of value from Mr. Harden in this situation. The evidence of phone calls being made as stated above, it not an activity that lawyers receive a fee for doing.



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The Florida Times-Union

January 30, 2008

Shad accused of punching man

By **BETH KORMANIK**,
The Times-Union

Jacksonville police were called to sort out an incident in which City Councilman Art Shad was accused of hitting a man in the face Monday in a San Marco park.

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Shad, 40, said he was acting in self-defense after the man's dog attacked him.

Both Shad and the dog walker, 47-year-old Timothy Patrick Kelly of Jacksonville, called police, who took a report but made no arrests.

Kelly could ask the State Attorney's Office to file a battery charge. State Attorney Harry Shorstein said Tuesday he and his top advisers had not been contacted by late afternoon.

Kelly, a lawyer, did not respond to calls to his home or law office Tuesday.

According to a police report, Shad was jogging about 5:50 p.m. Monday in FEC Park, 1620 Marco Place, where several people had let their dogs run around.

Kelly told police he was trying to prevent his black Labrador, which didn't have a leash, from running toward Shad when the councilman struck him in the face as he was bent over his dog. The report said Kelly was left with swollen, bleeding lips.

Kelly said the dog never touched Shad. A witness, who declined to give police her name, also said the dog did not touch Shad.

Shad told the Times-Union the dog charged him and bit his shoe.

"I was pretty freaked out. It was a big dog," Shad said Tuesday. "I was acting in self-defense. I don't know how else to say it. At one point I pushed him and said, 'Get your dog off me.'"

Shad had no visible injuries.

"I was able to keep that dog off pretty good, but a child or a smaller person probably wouldn't have been as successful," he said.

It does not appear that Kelly was cited under a city law that requires dogs to be kept on leashes. The penalty is a \$250 fine.

Several months ago Shad had cracked down about the enforcement of the city's leash law after complaints from park users. He said city officials are discussing putting a dog park at the 210-acre Losco Regional Park near Julington Creek.

Shad, who represents a Southside district, told the Times-Union last March that the city invested \$100,000 in a cleanup and planting effort to improve the park.

"FEC is a great open space and I'm glad to see it being well-used," Shad said at the time.

Shad also recently introduced dog-friendly legislation: a bill that would allow dog owners to take their pets to certain restaurants.

Times-Union writers Adam Aasen and Mary Kelli Palka contributed to this report.

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This story can be found on Jacksonville.com at http://www.jacksonville.com/tu-online/stories/013008/met_241843537.shtml.

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4/3/08

Lawyer files suit against Councilman Art Shad

A Jacksonville lawyer has filed a civil lawsuit against City Councilman Art Shad stemming from a January fight in a San Marco park.

Timothy Patrick Kelly filed the lawsuit last week asking for \$15,000 in damages.

Kelly told police that he was trying to keep his black Labrador, which didn't have a leash, from running toward Shad when the councilman punched him. Shad, who was jogging by FEC park at the time, said he was defending himself after Kelly's dog charged him.

Shad on Wednesday called the lawsuit "a money-making opportunity for Mr. Kelly." He said that shortly after the incident Kelly demanded \$75,000, which Shad declined to pay.

Kelly did not return calls to his home or office. A man who answered the phone at the number police list as his residence said it was the wrong number.

The Times-Union


Carla Miller

From: Carla Miller [cmiller@cityethics.org]

Sent: Monday, August 18, 2008 9:54 AM

To: 'carla@ndc.nu'

Lawyer-councilman clash still court-bound

Click-2-Listen 

Lobbyist friend unable to resolve differences over a dog and a punch.

By TIA MITCHELL, The Times-Union

A confrontation between a Jacksonville city councilman and a local lawyer will likely end up in court despite efforts by a high-profile lobbyist to intervene.

Paul Harden, a well-known fixture in City Hall, acknowledges he tried to smooth things over between Councilman Art Shad and Tim Kelly. He said he stepped aside when it became apparent that the two would not be able to settle their differences.

The civil case between Shad and Kelly is ongoing. It began in January when both men called police to report the actions of the other. Kelly accused Shad of punching him in the face; Shad said he was acting in self-defense after being attacked by Kelly's black Labrador, which wasn't leashed.

Neither man was charged.

Kelly filed a lawsuit in March accusing Shad of battery and seeking damages in excess of \$15,000. He told police the day of the incident he had a swollen and bleeding lip. A month later, Shad filed a counterclaim that accuses Kelly of violating city ordinance that requires dogs to be leashed. That violation, Shad's lawsuit contends, led to Kelly's dog charging at Shad.

Harden, a lawyer, said he tried to "calm over the waters" after receiving a call from a third party that was trying to resolve the matter and knew Harden was friends with both men.

"I thought it was a minor issue that could be resolved between people that I knew," Harden said.

Shad said it is his understanding that Circuit Judge W. Gregg McCaulie told Harden about the incident after Kelly told the judge. Shad declined to elaborate further.

Harden wouldn't tell the Times-Union who told him about the incident. Both Kelly and McCaulie declined to comment.

If it was a judge who brought Harden into the equation, then the judge's actions could raise questions, said a judicial ethics expert the Times-Union consulted.

8/18/2008

In response to the Times-Union's inquiries, the Florida Supreme Court's media office recommended Bob Jarvis, a judicial and legal ethics professor at Nova Southeastern University's law school, be asked to weigh in.

Jarvis said it sounded like a case where a judge had good intentions but should have been aware of the negative perceptions that could surround his involvement.

"Clearly the better thing would have been for the judge to say, 'Look, I cannot get involved in this because if you are unable to resolve this you may end up in court,' " Jarvis said.

Shad said he never asked Harden to get involved. If Harden had acted on Shad's behalf without payment, it would be considered a gift even if he wasn't working in an official capacity as the councilman's lawyer. Florida law prohibits elected officials from receiving gifts from lobbyists valued at \$100 or more.

Shad also scoffs at any notion that Harden's involvement could affect his objectivity in council matters. Harden is a registered lobbyist for a long list of clients, especially developers, and attends almost every council meeting.

On Tuesday, Shad supported Harden by voting in favor of a fair share agreement that was \$1 million less than it should be because of City Hall's accounting error. Shad said he joined 10 other council members in the vote because it was the right thing to do. He said there have been many other times when he sided against the position Harden was lobbying.

"You weigh the evidence, and you make the decision in the interest of the constituents who elected you to do the job," he said.

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