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Burkons' attorney wants special prosecutor 'terminated'

JANE KAUFMAN | STAFF REPORTER

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Oct 22, 2020



Peter Pattakos, left, and Michael A. Burkons, outside Chardon Municipal Court on the date of Burkons' arraignment.

CJN Photo / Jane Kaufman

The lawyer for Beachwood City Councilman Mike Burkons has written a demand letter calling for the Beachwood law director to “seek an injunction or otherwise terminate ‘special prosecutor’ Stephanie Scalise,” who is handling a criminal case against Burkons.

Citing several portions of Beachwood charter and ordinances, Peter Pattakos, a civil rights litigator with Pattakos Law Firm in Fairlawn, said Beachwood City Council was required to authorize the hiring of a special prosecutor. On behalf of his client, he is also threatening to file a taxpayer's lawsuit that would force the city to follow its ordinances.

Scalise, the University Heights prosecutor, is working without a contract and without pay, according to Pattakos.

Without prior council authorization, Pattakos argued in his Oct. 22 letter to Beachwood Law Director Diane Calta, Scalise's representation is not legal.

Pattakos wrote that Beachwood city prosecutor Nathalie Supler, "secretly contacted an outside attorney," referring to Scalise, whom he also wrote is a "personal friend" of Supler, as well as her former colleague at the Cuyahoga County Prosecutor's Office and her current colleague as lead prosecutors at Shaker Heights Municipal Court.

By way of example, Pattakos said the Beachwood City Council properly followed the law Aug. 22, 2019, in hiring Carole



Calta

Rendon, partner at BakerHostetler and her firm in order to undertake an investigation of Mayor Martin S. Horwitz.

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Supler

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October 22, 2020

By U.S. Priority Mail and email to diane.calta@beachwoodohio.com

Diane Calta
City of Beachwood
25325 Fairmount Boulevard
Cleveland, OH 44122

Re: Taxpayer demand under R.C. 733.56 and 733.59 to enjoin “special prosecutor”
Stephanie Scalise’s unauthorized representation of the City of Beachwood

Dear Ms. Calta,

This letter constitutes a demand by my client, Beachwood Councilman Mike Burkons, pursuant to Ohio Revised Code Sections 733.56 and 733.59, that you, as Beachwood’s law director, immediately seek an injunction against or otherwise terminate “special prosecutor” Stephanie Scalise’s unauthorized representation of the City in the criminal prosecution she has instituted against Burkons currently pending in the Chardon Municipal Court (Case No. 2020-CR-B-0858). If you do not immediately fulfill your obligation under R.C. 733.56 to enjoin Ms. Scalise’s unauthorized representation of the City, Mr. Burkons will exercise his right under R.C. 733.59 to institute legal proceedings on behalf of the City to ensure the same.

The basis for this demand, as you know from our recent correspondence, is that the Beachwood Charter and Codified Ordinances make clear that an attorney, including “special legal counsel,” may only act on the City’s behalf if specifically authorized “by ordinance of Council.” *See* Charter, Art. V Sec. 2.1, 2.3; B.C.O. Sec. 133.02–03. As you have admitted, no such ordinance was ever adopted here. *See Exhibit 1*, Diane Calta emails to Peter Pattakos, Oct. 19–20, 2020.

You have nevertheless claimed that Scalise’s representation of the City “is not in conflict with the City’s Charter nor its Codified Ordinances,” purportedly because Scalise was “appointed by the [Shaker Heights Municipal] Court” to serve as a prosecutor for the City after Assistant Law Director Nathalie Supler filed a motion requesting the same. *Id.* You have also informed me that the City “does not have an engagement agreement with Scalise relating to this matter,” and that, for unexplained reasons, “Ms. Scalise agreed to take on this appointment at no cost.” *Id.*

There are several problems with the City’s stated position here that require your immediate reconsideration:

First, in the City’s motion for “appointment of special prosecutor” that was filed with the Shaker Heights Municipal Court on September 14, 2020, the City admits it had already “engaged [Scalise] to gather and review all of the [purported] evidence” and “review the matter for criminal charges,” and also that Scalise had already completed this review and “communicat[ed] the findings of her investigation” to the Beachwood Prosecutor. *See Exhibit 2*, Beachwood motion for special prosecutor. Even if the Shaker Heights Municipal Court had authority to circumvent the Beachwood Charter and appoint a “special attorney” for Beachwood without Council’s approval of that attorney (as explained below, it does not, and it is also notable that the Shaker Heights Court had no reason to know that the City did not follow the necessary procedures in having “engaged” Scalise as special counsel), you have

Beachwood City Council president James Pasch previously told the Cleveland Jewish News repeatedly he was unaware of the hiring of Scalise. He had no comment on Pattakos' demand letter Oct. 22.

Multiple attempts to reach Calta and Supler were unsuccessful.

When reached by the CJN Oct. 22, Scalise had no comment.

"I'd prefer not to speak on the matter at this time," she wrote the CJN in an email.



Stephanie Scalise is the special prosecutor in the case against Michael A. Burkons.

CJN Photo / Jane Kaufman

Burkons pleaded not guilty to a single count of interfering with civil rights in Chardon Municipal Court Oct. 16. Shaker Heights Municipal Court Judge K.J. Montgomery requested the change in venue based on publicity surrounding the case and Burkons' status as a city councilman in Beachwood.

Judge Terri L. Stupica also issued a no-contact order for the alleged victim, Beachwood resident Alix Nouredine, at the request of Scalise.

Burkons was censured by Beachwood City Council Aug. 17 and on Sept. 25 was criminally charged for contacting Nouredine's employers at the city of Cleveland Heights July 13 following public complaints Nouredine made regarding a Beachwood police officer. Nouredine is also assistant law director for the city of Cleveland Heights.

"I was contacted by the Beachwood city prosecutor," Scalise told the CJN Oct. 16, referring to Supler. "I was told there was a situation in which ... a question had arisen about whether or not a city council person should be charged with criminal activity of any type."

Pattakos sent copies of the demand letter to both judges, Stupica and Montgomery, as well as to Supler and Scalise.

Stupica ordered the letter returned as an “inappropriate communication to the Court” because it did not take the form of a motion in an Oct. 23 order.

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Jane Kaufman