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Lawyer Subpoenaed for Evidence in Case of False Alarm at Law Firm

By Charles Toutant

A law firm sued over the false arrest of its librarian for allegedly pulling a fire alarm is now fighting to quash a subpoena served on its own defense lawyer.

Sheila Ciemniecki, formerly of Parker McCay's Marlton office, claims that a month-long delay by William Tambussi in presenting exculpatory evidence to the Burlington County Prosecutor's Office provides evidence of malice by the firm and supports an award of punitive damages.

Ciemniecki, with her subpoena, seeks to question Tambussi, of Brown & Connery in Westmont, about any conversations he had with representatives of the prosecutor's office about a videotape that shows a man pulling the fire alarm.

Tambussi says the subpoena should be quashed because none of his actions can be imputed to his client for purposes of showing malice or negligence, nor is the subpoena likely to lead to the discovery of admissible evidence.

Ciemniecki was fired and arrested on June 3, 2009, charged with turning in a false fire alarm in violation of N.J.S.A. 2C:33-3A. The county prosecutor administratively dismissed the charges on July 21 after viewing a security video from a camera in the law firm's hallway, showing it was a man that pulled the alarm.

Ciemniecki filed a suit naming the firm and the two Evesham Township police officers who arrested her. The counts against Parker McCay include malicious prosecution, negligence, negligent misrepresentation, negligent concealment of evidence, intentional concealment of evidence and abuse of process. She claims the firm retaliated



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against her because she complained to management about her work schedule and pay rate.

The suit originally also named Evesham Township and a local newspaper that published an article about the case, *The Central Record*, but they were dismissed as defendants.

Parker McCay claims its initial review of security video footage suggested Ciemniecki pulled the alarm, but later obtained additional footage showing a male pulling the alarm. The law firm and the police officers have asserted cross-claims against each other.

Ciemniecki's lawyer, Stephen Console, head of a Moorestown firm, said Parker McCay learned of the videotape that exonerated Ciemniecki on June 16, 2009, but did not provide the video to the prosecutor's office until a month later, on July 16. In the meantime, on July 8, Ciemniecki appeared for arraignment before an Evesham Township judge, who explained that she faced up to five years in prison and a fine of \$150,000 if convicted.

The law firm's delay "is compelling evidence of malice (and certainly negligence) on the part of Parker McCay," Console said in a March 30 letter to Tambussi. In depositions and interrogatories, Parker McCay's Chief Operating Officer, Stephen Mushinski, and its chief executive officer, Philip Norcross, said they don't know the reason for the delay between the discovery of the exonerating videotape and the time it was provided to the prosecutor, Console wrote.

Tambussi says that upon receiving the exculpatory video on June 19, he phoned Prosecutor Robert Bernardi, learned he was away on vacation and left a message. Then, on July 16, Tambussi sent a letter to Raymond Milavsky, the first assistant prosecutor, along with a copy of the exculpatory video.

Tambussi argues that his subpoena falls outside Rule 26 of the Federal Rules of Civil Procedure, the provisions governing discovery. His brief says the subpoena is "based on a purely speculative assumption, namely, that if the additional video footage was produced earlier, plaintiff's criminal proceedings would not have been prolonged and/or she would not have appeared in Municipal Court on July 8, 2009. Given the discovery record, it is clear that this assumption is baseless."

Tambussi further argues that the question Ciemniecki asks via the subpoena has already been answered in the deposition, and any communications between Tambussi and the prosecutor's office could not have impacted the defendants, because they had no knowledge of it. What's more, the information sought is available through other sources that are "less intrusive into the

adversarial process," namely the staff of the prosecutor's office, but the plaintiff has not sought to depose them.

Plaintiff's lawyer Console, in a brief opposing Parker McCay's motion to quash, says Tambussi is a fact witness on two significant issues in the case: why there was a delay in informing the prosecutor's office of exculpatory evidence, and what was said in con-

versations between Tambussi and the prosecutor's office.

What's more, Console says, Tambussi is the only person with knowledge of the reason for the delay, and as the defendants' agent, his conduct can be imputed onto the Parker McCay defendants.

Console and Tambussi did not return calls about the subpoena. ■