

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION**

DISTRICT COURT

Judith Crowell :
 :
v. : **A.A. No. 10 - 209**
 :
State of Rhode Island, :
(RITT Appellate Panel) :

JUDGMENT

This cause came on before Gorman J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Appellate Panel is affirmed.

Dated at Providence, Rhode Island, this 15th day of February, 2012.

Enter:

By Order:

_____/s/_____

_____/s/_____

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DECISION

Through this appeal, plaintiff seeks to overturn a finding at the Rhode Island Traffic Tribunal that she failed to obey a traffic control device. Ms. Crowell contends that the procedure followed at the evidentiary hearing before a magistrate was fatally flawed because no attorney licensed to practice in Rhode Island appeared to represent the state at that hearing. This court has jurisdiction pursuant to Rhode Island General Laws, 1956 § 31-41.1-9.

I. PROCEDURAL HISTORY AND FACTS

In January of 2010, the plaintiff was charged with driving through a red light in North Kingstown. Ms. Crowell’s case was heard before a Magistrate at the Rhode Island Traffic Tribunal, and following a finding of a violation of Rhode Island General Law §31-13-4 (failing to obey a traffic

control device), she appealed the decision. Plaintiff contends that the hearing official committed an error of law by allowing the matter to go forward without a lawyer present to represent the state agency responsible for filing the charges. The appeal panel at the traffic tribunal rejected that argument and affirmed the hearing magistrate's decision. Plaintiff then filed a complaint in the district court.

A clear, and extremely detailed description of the circumstances leading to the issuance of a summons by a Rhode Island State Trooper are set out in the appeal panel's decision. However, those facts are not relevant to the issue presented in this appeal.¹ Ms. Crowell's complaint is based solely on her contention that the traffic tribunal magistrate erred as a matter of law by allowing the case to be heard even though the state was not represented by a licensed lawyer. She argues that the police official who appeared and testified was engaged in the unlawful practice of law in

¹ The only factual dispute raised by Ms. Crowell at the initial hearing concerned whether the light was red or yellow when she drove through the intersection. The state trooper testified that it was red, and plaintiff said that "to the best of [her] recollection it was yellow." Trial Tr., p. 13. In her memorandum in support of this appeal, she "concedes that Trooper Tondre had probable cause not only to stop the Petitioner but to also issue her a citation for failing to obey a traffic control device." PETITIONER'S MEMORANDUM IN SUPPORT OF HER COMPLAINT TO DISMISS THE FINDING OF THE TRAFFIC TRIBUNAL MAGISTRATE AND THE DECISION OF THE APPEALS PANEL, pp.4-5.

violation of Title 11 Chapter 27 of the General Laws of Rhode Island, and that any decision based on that proceeding is invalid.²

It is the court's understanding that through the years – from the establishment of the Administrative Adjudication Division, which was part of the Department of Transportation, the later creation of the Administrative Adjudication Court, and through its conversion to the Rhode Island Traffic Tribunal, police officers have testified in cases involving traffic violations without a lawyer present to represent the state's interests. However, this appears to be the first case to suggest that the procedure requires dismissal of the charges based on the absence of a prosecuting attorney.³

In this case, a summons was issued by a Rhode Island State Police Trooper. A trial date was set, and at that time, plaintiff, her attorney and the trooper responsible for the stop and the summons appeared before a Rhode Island Traffic Tribunal Magistrate. The case was announced by the magistrate and the police officer was sworn as a witness. At that point,

² In his argument before the review panel, plaintiff's attorney suggested that if the police witness was not practicing law, then the magistrate was not acting as a detached and neutral official. The latter argument is not raised in the current proceeding.

³ In 2006, the Rhode Island Bar Journal published an article criticizing the practice of allowing police officers to appear in the district court as well as the traffic tribunal, but there was no suggestion that sentences imposed in those instances were invalid or that the cases should be dismissed. POLICE PROSECUTION IN RHODE ISLAND: THE UNAUTHORIZED PARACICE OF LAW, Rhode Island Bar Journal, May/June, 2006, p. 5.

defendant's counsel asked whether this witness was a lawyer. The witness answered, "yes." This was followed by a colloquy between the magistrate and Ms. Crowell's attorney. The transcript indicates that some of this exchange was unintelligible, but defense counsel made it clear that he believed that the hearing could not be held unless the state was represented by a person licensed to practice law in Rhode Island. Trial Transcript, pp. 3-4. The magistrate made it equally clear that the officer was there only as a witness, and the case would be heard at that time. Id., p 4.

The state police officer then testified about his observations and the issuance of a summons to Ms. Crowell. He was cross examined by defense counsel. Ms. Crowell also testified but was not cross examined.

At the end of the hearing, the magistrate found clear and convincing evidence to support the charge filed against Ms. Crowell,⁴ and he imposed a

⁴ At the hearing, the trooper testified that he observed the car being driven by Ms. Crowell travel through a red light on Route 4 in North Kingstown. He further testified that he was in a position which allowed him to see the color of the light.

Plaintiff also testified at the hearing, saying that she was traveling at "55 or 60" miles per hour when she first saw the traffic signal, that it was green, and at that time she was "some distance from the intersection." Trial Transcript, p 10. She explained that there "were, maybe, five cars between me and the intersection." Ibid.

According to Ms. Crowell, the light turned yellow when she was about 50 feet from the intersection, she maintained her speed, drove through the intersection, and "to the best of [her] recollection, the light was yellow." Id. pp, 11-13.

statutory fine of \$85, plus court costs. The motorist appealed, but when the case was considered by the appellate panel, defendant did not contest the factual findings made at trial. Ms. Crowell's attorney only argued that the hearing process was defective because the charging party, the state or an agency of the state, was not represented by an attorney licensed to practice in Rhode Island. The complaint filed in this court is similarly limited to challenging the procedure followed by the magistrate at trial.

II. DISCUSSION

The question presented in this appeal – whether a decision by a judge or magistrate at the Rhode Island Traffic Tribunal is valid when the state agency which charged a violation was not represented by an attorney licensed to practice in this state, has not been considered by this court previously. However, the theory underlying the plaintiff's complaint – the issue of unauthorized practice of law, has been the examined by the Rhode Island Supreme Court on several occasions, and a very recent decision, In re Town of Little Compton, A.3rd (R.I. 2012)(No. 2011-101 M.P.) (Decided 2/9/12), provides significant guidance.

A.

Plaintiff's claim in this court is based on her contention that the state trooper's actions amounted to an unauthorized practice of law. The

appellate panel ruled that because his actual conduct was limited to appearing before the magistrate and testifying, the officer was not practicing law and no error occurred at the trial level. That determination is entirely consistent with the decisions of our supreme court.

The starting point for any discussion of a question concerning the unauthorized practice of law requires a recognition that the Rhode Island Supreme Court has exclusive power to define and regulate the practice of law in this state. In re Town of Little Compton, (slip op. at 5), Unauthorized Practice of Law Committee v. State Department of Workers' Compensation, 543 A. 2d 662, 664 (R.I. 1988). A second touchstone in this process is an acknowledgement that it is inherently difficult, and perhaps unwise, to define with precision exactly what constitutes the practice of law. See In re Town of Little Compton, slip op. at 10, Creditors' Service Corporation v. Cummings, 190 A. 2, 9 (R.I. 1937).

As a general proposition, the practice of law typically involves appearing before courts or administrative boards and commissions, giving legal advice, preparing instruments in any one of a large variety of business and trust relations, and assisting in the execution of those documents. See Rhode Island Bar Association v. Automobile Service Association, 179 A. 2d 139, 144 (R. I. 1935). A further definition of activities which would be

expected of lawyers can be found in § 11-27-2 (1) which includes the following:

(1) The appearance or acting as the attorney, solicitor, or representative of another person before any court, referee, master, auditor, division, department, commission, board, judicial person, or body authorized or constituted by law to determine any question of law or fact or to exercise any judicial power . . .

The state trooper in this case certainly appeared before a “judicial person” authorized to determine a question of law or fact. But prior to his being sworn as a witness, he did not identify himself as a representative of the Rhode Island Department of Public Safety, and the hearing magistrate specifically limited his participation at the hearing to be as a witness only. Moreover, the police officer did not engage in any of the activities which would be expected of a lawyer: he submitted no written or oral argument, presented no witnesses, did not cross examine Ms. Crowell when she testified, offered no objection to evidence presented by Ms. Crowell’s attorney, and he asked no questions of the court.

It is significant that under the procedure followed at the traffic tribunal, police officers are expressly empowered to carry out some duties. Rule 6(a) provides that at arraignment “[t]he police department which

charged the summons shall be represented by a *prosecution officer*,”⁵ and Rule 27(a) states that “[t]he *prosecution officer*⁶ or the attorney for the state or municipality may dismiss a summons and the prosecution shall thereupon terminate.”

Similarly, Rule 23(c) authorizes non-lawyers to act for some corporations charged at the traffic tribunal. It permits close corporations with assets of less than \$1,000,000 to have a representative who is not a lawyer arrange and pay fines that do not exceed \$500.

In addition to the fact that the rules governing activities at the traffic tribunal establish an intent to entertain cases even though no lawyer appears to represent the interests of corporations and the charging jurisdictions, this court believes that the tradition at the traffic tribunal of conducting hearings involving minor violations without the presence of the attorney general’s office.⁷ supports the appellate panel’s decision to reject defendant’s request to dismiss the charges against Ms. Crowell.

The court is also aware that corporate employees who are not licensed attorneys often appear and testify before various state agencies in connection

⁵ Emphasis added.

⁶ Ibid.

⁷ When the case was argued before the appellate panel, comments were made indicating that it was the general and long standing practice of the traffic tribunal judges and magistrates to permit police officers to testify without a prosecuting attorney.

with issues affecting their companies. Some state agencies have promulgated regulations that permit non-lawyers to appear before them in a representative capacity. Indeed, this court regularly reviews appeals from hearings before the Rhode Island Department of Labor and Training, Board of Review where this has occurred.⁸

Within the past week the Rhode Island Supreme Court has addressed the same issue, but in a different context. See In re Town of Little Compton, supra. In that case, involving a non-lawyer who represented a union at an arbitration hearing – where he performed many of the functions normally reserved to attorneys,⁹ the court found it to be an “exquisitely close case.” The three justices who heard the matter chose not to decide the “generic Issue” relating to non-lawyer participation in labor disputes. Slip op. 17.

⁸ Under the Rhode Island Employment Security Act, hearings are conducted by referees and a board of review where corporate officers routinely testify without an attorney being present. Appeals from these decisions are filed in the district court. See § 28-44-52. The administrative hearings are conducted pursuant to rules published by the Rhode Island Department of Labor and Training. Rule 1 provides:

Any interested party may be represented at a hearing before a Referee or the Board of Review by a [knowledgeable] person . . .

A party’s representative need not be an attorney.

R.I. Admin. Code 42-2-1:11, R.I. ADC 42-2-1:11.

⁹ The union official “presented arguments, examined and cross-examined witnesses, submitted evidence to the arbitrator, and objected to evidence and arguments presented by the town.” Slip op. 16.

The limited scope of the state trooper's participation, the history of conducting hearings without an attorney prosecutor being present, and the traffic tribunal's rules expressly permitting non-lawyers to perform some representative activities even without the recent supreme court decision, all strongly suggest that the appeal panel's decision could be affirmed on the basis that the police officer was not "practicing law." However, it does not appear necessary, or appropriate, for this court to affirm the panel's decision based on a finding that the state trooper did not engage in the unlawful practice of law.

B.

The power to regulate all aspects of legal practice in the state falls within the province of the Rhode Island Supreme Court, Unauthorized Practice of Law Committee v. State of Rhode Island Department of Workers' Compensation, 543 A.2d 662, 664 (R.I. 1988), and through its contempt power, our supreme court can punish those practicing law without a license, Rhode Island Bar Association v. Automobile Service Association, 179 A 139 (R.I. 1935). In exercising its contempt authority, however, the court has said that it "does not encourage" suits under this theory, adding that "[i]n trivial or unimportant instances of illegal practice of the law, it should not be used," *id.* at 142. As part of the same discussion, the court

said that absent unusual circumstances which might require immediate relief, “[w]here other remedies are available and sufficient to right the wrong complained of, they should be invoked first,” ibid.

Though plenary power rests in the Rhode Island Supreme Court, the legislature may act to aid the court in its efforts to ensure that unqualified persons do not act as attorneys. See In re Town of Little Compton, slip op. 10-11, Unauthorized Practice of Law Committee v. State of Rhode Island Department of Workers’ Compensation, 543 A.2d 664. To assist in this process, the General Assembly enacted Chapter 27 of Title 11, of the Rhode Island General Laws 1956 which is entitled “LAW PRACTICE.” Under § 11-27-5 of that statute, it is unlawful to practice law in Rhode Island unless the person is a member of the bar, and criminal penalties for violations are set out in § 11-27-14. Also, § 11-27-19 describes a comprehensive system for identifying and preventing the unauthorized practice of law. This section establishes an “unauthorized practice of law committee” and further provides:

(b) It shall be the duty of the attorney general and the unauthorized practice of law committee to enforce the provisions of the chapter and to investigate and prosecute all violations. It shall be the duty of the attorney general to prosecute all criminal violations. The superior court shall have jurisdiction to restrain and enjoin any of the acts prohibited in this chapter upon a complaint brought by the attorney general,

by any member of the bar of this state . . . or by the unauthorized practice of law committee.

* * *

(d) The unauthorized practice of law committee shall have the following duties and powers:

* * *

(2) To investigate all reports of activities which may constitute unauthorized practice of law and to hold hearings to determine whether the charges are substantiated or unsubstantiated.

Through her complaint, plaintiff, in effect, is asking the district court to punish the state police, or the trial magistrate, for allowing a police officer to practice law without a license. As part of its inherent authority, this court can sanction litigants who are properly before the court and who act in a contumacious manner. But the conduct here occurred at the traffic tribunal, and the district court's contempt powers fall far short of the authority posited in our supreme court. Given these differences and our supreme court's warning that contempt is "a dangerous power, and is therefore to be used with great caution," Rhode Island Bar Association v. Automobile Service Association, 179 A. 142, this court, if it has the authority – which is questionable, will not treat the state's conduct before the traffic tribunal as misconduct requiring dismissal of the charges brought against Ms. Crowell.

It appears that plaintiff believes that outside of its contempt authority, this court can, and should, determine that the state trooper's appearance and testimony at the traffic tribunal constitutes an unlawful practice of law. This

court is not the proper forum for deciding whether a person has violated § 11-27-5. Other remedies were available to the plaintiff. She could have petitioned the superior court or filed a complaint with the unauthorized practice of law committee – and, if necessary, requested that the proceeding in the traffic tribunal be stayed until the court or committee ruled on the question. She did not pursue these statutory remedies. Rather, the hearing was conducted, and after an adverse decision, appeals were taken, first to an appellate panel, and then this suit was filed requesting relief that, if granted, could affect a wide range of cases decided by the traffic tribunal and other matters currently pending there.

Because a statutory procedure for dealing with the unauthorized practice of law is mandated through Chapter 27 of Title 11, and that statute places jurisdiction for addressing this issue in the committee created under § 11-27-19 and the Rhode Island Superior Court, this court will not decide whether the state trooper was practicing law without a license when he testified at the traffic tribunal hearing.

C.

Although this court cannot resolve the unlawful practice of law question, the allegations in the complaint will be addressed. The complaint tracks the language of § 31-41.1-9 stating that her rights have been violated

for all of the six reasons set out in § 31-41.1-9(a).¹⁰ Based on the arguments made before the appellate panel and those raised in plaintiff's brief, the court will decide the limited issue of whether the magistrate had a duty to dismiss the charges against plaintiff when the state failed to have a lawyer present at the hearing.

This is a pure question of law which requires no interpretation of facts or deference to the hearing officer. The plaintiff has the burden of persuasion, and must present some facts or legal authority to support her request for relief. She has not done this. Ms. Crowell's arguments are based solely on her belief that the proceeding at the traffic tribunal involved the unauthorized practice of law. Even if plaintiff is correct and the state agency pursuing the charges against her must be represented by counsel, there are clearly remedies available short of dismissal. Courts and other judicial tribunals have an obligation to decide cases on their merits if it is reasonably possible to do so. Dismissal of claims on procedural grounds are discouraged and, generally, disfavored.

In this case, alternatives to dismissal existed, and were known by the plaintiff. Her counsel actually told the appellate panel that he was going to seek a ruling from the Unauthorized Practice of Law Committee. The

¹⁰ Subsection 9(a)(1) refers to a violation of the constitutional or statutory provisions. The complaint did not include a claimed constitutional violation.

colloquy at the beginning of the hearing before the trial magistrate shows that counsel had a good understanding of the statute forbidding non-lawyers from acting as attorneys, and the same section creating the committee provides for injunctive relief through the superior court.

Before this court can order the dismissal of charges in an appeal from the traffic tribunal, there must be a showing of misconduct by the prosecutor, or a denial of some recognized right. The conduct complained of in this case fails to satisfy that test, and dismissal would not be proper. Because of the long standing involvement of non-lawyers in matters heard at the traffic tribunal, this court will not act to alter the practice at this time. Cf. In re Town of Little Compton, slip op. 17.

III. CONCLUSION

For the reasons set forth above, the relief requested by the plaintiff is denied. The decision of the appellate panel is affirmed.