

Pashman Stein Walder Hayden Attorneys Represent the National Association of Criminal Defense Lawyers

RELATED ATTORNEYS

Dillon J. McGuire

Alan Silber

RELATED PRACTICE AREAS

Criminal Defense

News
10.4.19

Pashman Stein Walder Hayden Attorneys Represent the National Association of Criminal Defense Lawyers as *Amicus Curiae* and Receive Court Order Quashing State's Subpoena of Criminal Defense Lawyer to Testify Against His Former Client.

Pashman Stein Walder Hayden attorneys Alan Silber and Dillon J. McGuire were pleased to receive an Order on October 4, 2019, from the Honorable Margaret Foti, P.J.Cr., presiding criminal judge in the Superior Court of New Jersey, Bergen Vicinage, wherein she rejected the State of New Jersey's motion to compel a criminal defense lawyer (Lanry Belizaire) to testify against his former client.

"This is a significant result in that the Court quashed the State's subpoena to compel Belizaire to testify before a grand jury," said Silber. "Pashman Stein submitted an *amicus curiae* brief on behalf of the National Association of Criminal Defense Lawyers, stating that the prosecutors could not compel Belizaire to testify when other feasible alternative means to obtain the information were available to the State. The Order recognized this criminal defense lawyer's ethical obligations to his client."

Factually, Belizaire had arranged for his client to turn himself in to authorities, but the client did not appear to surrender at the scheduled time. The defendant, who was accused of several crimes including first degree sexual assault, was later apprehended at an airport attempting to travel to Jamaica. Following the defendant's arrest, prosecutors served Belizaire with a subpoena for documents, including communications with his client and any third parties regarding the voluntary surrender, and sought to compel the attorney to turn over documents and testify against his client before a grand jury in relation to a fourth degree obstruction by flight. Belizaire refused, consistent

with his legal and ethical obligations to his client, and retained counsel to fight the subpoena.

The State's case was originally rejected by Judge Foti on August 15, 2019. Relying upon RPC 3.8(e), Judge Foti held that there were feasible alternative means for the State to acquire the sought-after information that must be pursued before it could subpoena a defendant's former lawyer. Judge Foti concluded that the State possessed a pool of potential investigative leads, and needed to make reasonable efforts to exploit those leads before it was entitled to Belizaire's testimony. Judge Foti denied the State's Motion to Enforce the Grand Jury subpoena.

"Judge Foti was able to see through the State's arguments, and unequivocally reinforced the critical importance of the lawyer client relationship," said McGuire. "Prosecutors are vested with a great deal of discretion in conducting investigations and presenting evidence to grand juries, but that discretion is not without its limits. Judge Foti appropriately exercised her supervisory authority and held the State to its ethical obligations under RPC 3.8(e)."

On September 4, 2019, the State filed a Motion for Reconsideration, as well as a Motion to Enforce a second Grand Jury subpoena issued to Belizaire on Sept. 3, 2019. Defense counsel, as well as Pashman Stein as *amicus*, argued that the State did not meet its burden for reconsideration, and failed to demonstrate that there were no other feasible alternative means to obtain the information sought in the State's latest subpoena to Belizaire. The court entered its Order on October 4, 2019, denying the State's motions.