

THE STATE OF NEW HAMPSHIRE SUPERIOR COURT
SOUTHERN DISTRICT OF HILLSBOROUGH COUNTY

226-2021-CV-00354

Laurie Ortolano

v

City of Nashua

MOTION TO WITHDRAW REMEDIAL TRAINING AND MEMORANDUM FOR TRAINING

Laurie Ortolano, Plaintiff, pro se, requests the Court accept the withdrawal of the prayer for remedial training and accept the withdrawal of the Plaintiff's Memorandum for Training.

1. The Plaintiff sought assent from the City and on October 2, 2022, Attorney Hilliard responded that "the City has no objection to the relief requested."
2. On June 16, 2021, the Plaintiff requested from City employees' specific emails records with the date range of November 1, 2020 to March 7, 2021.
3. The Court held a Bench Trial on December 6, 2021.
4. The Court issued Orders on February 7, 2022 and March 25, 2022.
5. The February 7, 2022 order stated:

....the court orders the City to participate in remedial training but declines to enjoin future violations... The parties shall submit memoranda within 30 days of the Clerk's notice of this Order addressing their respective proposals regarding the nature and duration of this remedial training. The Training proposal shall address only how the City's searches in response to requests for records must be conducted under RSA 91-A and not whether the City's email retention policy complies with RSA 33-A.
6. On April 27, 2022, the City filed a Notice of Appeal challenging, in part, the training.

Granted



Honorable Charles S. Temple

October 15, 2023

Clerk's Notice of Decision
Document Sent to Parties
on 10/16/2023

7. On May 1, 2022, the Plaintiff filed a Memorandum on Training as ordered by the Court. The Plaintiff had no legal assistance on this Memorandum. The Plaintiff recognizes that the City will most likely object to the memorandum as the Plaintiff, most likely, did not stay within legal boundaries to define the training. The Plaintiff can only speak to training as a citizen, not as an attorney. The Plaintiff has been subjected to extreme criticism from the City and criticism from the Court. Participating in this training is a no win situation for the Plaintiff.

8. On May 12, 2022, the Plaintiff filed a Motion to Remand the City of Nashua's Appeal back to the Trial Court to determine the requirements for remedial training. The Plaintiff believed the City acted in haste and did not properly permit the order to be finalized.

9. On May 24, 2022, the Supreme Court denied the motion to remand back to the Trial Court to permit the training order to be defined and court approved.

10. On August 18, 2023, the Supreme Court issued an Opinion and Affirmed and remanded the case back to the Trial Court.

11. The Opinion regarding remedial training stated:

The City further argues that the trial court erred in ordering remedial training because "[t]he New Hampshire Municipal Association routinely supplies trainings relative to RSA Chapter 91-A" and "[t]he material on its website offer the same interpretation of RSA 91-A:4, III-b that the City argues here," thus making remedial training under these circumstances "not necessary." However, we decline to decide this issue because a final ruling has not yet been made on the City's remedial training. See *Germain v. Germain*, 137 N.H. 82, 84 (1993) ("Generally, when a trial court issues an order that does not conclude the proceedings before it, for example, by deciding some but not all issues in the proceedings . . . we consider any appeal from such an order to be interlocutory"). (emphasis added)

12. As this simple request for records now enters the third year of litigation, it seems appropriate to conclude the following:

- a. The City has adopted the legal position that they will minimize access to public information by using the most restrictive interpretation possible of the State Constitution and State Right to Know Laws.
- b. The City, in support of its legal position, has adopted the legal strategy to force those who oppose their position to seek a legal remedy via the court system. This of course favors the City since it can deploy staff attorneys and with its unlimited funds, provided by the taxpayers, can even hire outside counsel to pursue the matter on the City's behalf. Plaintiffs have difficulty finding NH Attorney's willing to perform this work.
- c. In the event of an unfavorable ruling, as was the situation with this case, the City can further delay the matter by appealing the decision to the New Hampshire Supreme Court. Again, this of course favors the City since it can deploy staff attorneys and with its unlimited funds, provided by the taxpayers, can even hire outside counsel to pursue on their behalf.
- d. Rulings in both this Court and the NH Supreme Court has contributed to the efficacy of the Cities legal strategy. First, this court ordered the City to participate in remedial training and established a process for development of this training. Second, this Court elected to not require the City to comply with its training order by way of granting the Motion to Stay on the basis that the City had filed a Notice of Appeal. Third, the NH Supreme Court denied the Plaintiff's motion to remand the case back to this Court for completion of the training order. Fourth, the NH Supreme Court affirmed the lower Court decision and then ruled "However, we decline to decide this issue [remedial training] because a final ruling has not yet been made on the City's remedial training."

13. The game of "Remedial Training" ping pong continues. At this point it is fairly easy to identify the path that the City will pursue on the training issue. Delays and appeals should be expected.

14. On the contrary, the Plaintiff's position is supported by the NH State Constitution Part 1, Article 8:

"Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted."

and NH State Law RSA 91-A:

“Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.”

15. It is now clear that the Plaintiff’s position is fundamentally irreconcilable with the Cities position and any order which requires collaboration¹ is simply impractical, inefficient and a waste of the taxpayers’ money and the courts time.

16. The Plaintiff’s primary interest has always been gaining access to public records.

17. The Plaintiff’s position is practical and logical. The Plaintiff has a rapidly approaching December 2023 multi-day trial which requires her focus, time and energy. The Plaintiff believes the Court’s time is best served on this future case and not this past case, which is now almost 2 ½ years old.

18. The delays associated with the remedial training have rendered it moot.

Wherefore, the Plaintiff requests the Court accept the motion to withdraw the remedial training order and accept the withdrawal of the Memorandum on Training.

Respectfully Submitted,

October 2, 2023

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CERTIFICATE OF SERVICE

I hereby state that on the above date, the Defendants have been served via the Court’s electronic filing system.

¹ The Plaintiff was unable to get the Defendants to respond to emails requests to organize mediation for the “00309” Petition which required the Plaintiff to address the matter in a Status Conference.