



STATE OF OKLAHOMA  
ETHICS COMMISSION

FOR IMMEDIATE RELEASE  
September 17, 2009

## PLAINTIFF DISMISSES LAWSUIT AGAINST THE ETHICS COMMISSION

Oklahoma City. In public meeting, Chairman John Raley of the Oklahoma Ethics Commission today announced that Plaintiff Tom Hardgrave has dismissed his lawsuit against the agency. The case against co-defendant, state Representative Rex Duncan, was dismissed at the same time. No money damages or attorneys' fees were awarded.

"Fortunately," Raley said, "the plaintiff abandoned his case at the initial stages of the proceedings. This occurred even before the discovery phase. That saved a great deal of time, effort and public resources."

The action, originally filed in Tulsa County, was transferred to Osage County pursuant to a ruling which found the case was more properly brought in that venue. The Ethics Commission filed a subsequent Motion To Dismiss, contending that allegations against it were required to be brought in Oklahoma County District Court. Before the Osage County District Judge could rule, Plaintiff's counsel announced to the Court he would dismiss the lawsuit against both the Commission and Duncan.

The Commission was represented in the matter by lawyers from the Office of Attorney General Drew Edmondson. Assistant Attorney General Greg Metcalfe was lead counsel. Senior Assistant Attorney General Neal Leader acted as "second chair." Raley said, "The Commission is grateful to General Edmondson for representing the Commission and for the work of the lawyers he assigned to the case. These attorneys demonstrated both skill and consummate professionalism." Duncan retained and was represented throughout by private counsel.

The case grew out of interaction between Hardgrave and Duncan. The Plaintiff sought money damages against the state representative. No money damages were requested by the Plaintiff with respect to the Ethics Commission.

Instead, the Commission was cited for Section 257:30-1-3(f) of the Constitutional Ethics Rules, Section 1-1-1 et seq of the Rules of the Ethics Commission, 74 O.S. Supp. 2009, Ch. 62, App. The rule provided:

### Investigations

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Prior to a determination to initiate a complaint under Section 4 of this chapter, no person who has provided information to the Commission or has knowledge that the Commission is undertaking an investigation shall disclose:

- (1) his knowledge that an investigation has been undertaken;
- (2) any information he obtains as a result of having submitted information or interacted with the Commission in connection with a particular investigation; or
- (3) the fact that he testified to or filed information with the Commission, or otherwise participated in the Commission investigation.

\* \* \*

Section 257:30-1-3(f)

Other states had similar provisions when this rule was promulgated in 1992 [taking effect in 1994]. They were designed to protect the reputations of state officers and employee from unproven – and in some instances, anonymous – allegations until investigation established an adequate basis for the belief that a violation had occurred and that a state officer/employee committed same. Over time, a growing trend in case law has found these provisions to infringe free speech.

In response, the Commission conducted research into the current status of case decisions. It conferred with its attorneys. The Commission then called a Special Meeting. After studying the matter, members adopted a Resolution that it would not enforce the existing rule pending legislative review of a replacement provision, which the Commissioners promulgated that day. The new provision passes constitutional muster.

In its 18-year history as a constitutional agency, the Ethics Commission has been sued three times. Each occasion was a challenge, or eminent challenge, to one of its ethics rules. “Considering the work we do, that is an excellent record,” the Chairman stated.

Chairman Raley, who is a practicing attorney, noted that no one is immune from service of process. “Anyone can be sued, at any time. Proving allegations in the court room,” he observed, “is another matter.”

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