

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

ERIC GREITENS,)
Petitioner,)
vs.) Case No. 18AC-CC00143
MISSOURI ATTORNEY GENERAL,)
Respondent.)

ORDER AND JUDGMENT

The Court takes up the pending cause for ruling, having considered the pleadings, the authorities cited therein and the arguments of counsel. Being duly advised in the premises, the Court denies Petitioner's request for a Temporary Restraining Order and sustains the Respondent's Motion to Dismiss.

Petitioner seeks an injunction restraining Attorney General Hawley and his entire office from participating in an investigation of the Mission Continues as well as requesting the appointment of a special prosecutor pursuant to § 56.110 RSMo (2016). Petitioner relies on alleged violations of Supreme Court Rule 4-3.8 (Special Responsibilities of a Prosecutor) by Respondent as well as the provisions of § 56.110 RSMo.

There is no private cause of action for violation of the Rules of Professional Conduct. Comment 20 to the Scope of Supreme Court Rule 4 informs us that:

Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

While a rule violation might warrant disqualification in the context of a specific case, there is no such case pending before this Court. Nothing in the Rules of Professional Conduct grant this Court the authority to globally enjoin the Attorney General from performing tasks authorized by statute on the

grounds that he is violating Rule 4.

Independently, Rule 4-3.8 by its plain language expressly applies only to criminal prosecutions and not to investigations which might reveal evidence of criminal conduct. Nothing before the Court indicates that the Respondent Attorney General is currently prosecuting a criminal case against Petitioner, let alone one in before this Court.

With respect to § 56.110 RSMo, this Court's authority for appointment is limited to actions within its criminal jurisdiction. No such actions are pending in this Court. Furthermore, the facts pleaded by Petitioner fail to establish any "interest" contemplated by § 56.110 RSMo nor were any cases identified which are factually similar which would allow this Court to find such an interest..

In reviewing a motion to dismiss, the Court assumes as true all well pleaded allegations of fact. The Court makes no finding 1) of a violation of the Rules of Professional Conduct on the part of Respondent; 2) of any violations of criminal law on behalf of the Petitioner; or 3) as to the propriety or impropriety of any alleged conduct by either side. The Court simply finds that Petitioner has failed to establish a likelihood of success on the merits and is not entitled to a temporary restraining order. Because the Court finds that Petitioner has failed to state a claim upon which relief may be granted, the Motion to Dismiss is sustained. Nothing else should be inferred.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's request for a temporary restraining order is denied and that his Petition by and is hereby dismissed with prejudice. Costs taxed to Petitioner.

SO ORDERED this 26th day of April, 2018.

A handwritten signature in black ink, appearing to read "Jon E. Beetem". The signature is written in a cursive, flowing style with some loops and flourishes.

Jon E. Beetem, Circuit Judge, Division I