IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

WILLIAM PASKEY,	:	
	:	C.A. No. K20M-12-019 WLW
Petitioner,	:	
	:	
v.	:	
	:	
DELAWARE CRIMINAL JUSTICE COUNCIL and TOWN OF ELLENDALE, DELAWARE,	:	
	:	
Respondents.	:	

Submitted: February 8, 2021
Decided: April 20, 2021

ORDER

Upon Petitioner's Writ of Mandamus
Denied.

William Paskey III, *pro se*

Stacey Cohee, Esquire of the Department of Justice, Dover, Delaware; attorney for the Delaware Criminal Justice Council.

Craig T. Eliassen, Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware; attorney for the Town of Ellendale, Delaware.

WITHAM, R.J.

Petitioner, William Paskey (hereafter "Petitioner") seeks a Writ of Mandamus that (1) allows Petitioner representation of Petitioner's choosing; (2) restricts the Delaware Criminal Justice Council (hereafter "CJC") from receiving legal advice by counsel during Petitioner's hearing; and (3) restricts the Town of Ellendale, Delaware (hereafter "Ellendale") from utilizing non-licensed representation during Petitioner's hearing.[1] After reviewing the record and arguments presented by each party, this Court **DENIES** the petition for a Writ of Mandamus.

Facts and Procedural History

1. Petitioner was a part-time police officer with the Ellendale, Delaware Police Department. At some point prior to March 2020, during the course of Petitioner's employment as an Ellendale police officer, Petitioner faced a disciplinary hearing before the CJC. The disciplinary hearing was originally scheduled to occur on March 4, 2020, but, after several requests from Petitioner for a continuance and the delay in all judicial proceedings in the State of Delaware due to the pandemic, the hearing did not commence until November 6, 2020.[2]

2. During the hearing, Petitioner was accompanied by a gentleman named Bob Sklar (hereafter "Sklar") who was presented to the CJC trial board as Petitioner's representative.[3] Sklar is not a licensed attorney in the State of Delaware,

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[1]Delaware Criminal Justice Council and the Town of Ellendale, Delaware, are both Respondents in this petition and will hereafter be collectively referred to as "Respondents."

[2]*See* Respondent's Answer Brief at ¶1.

[3]The Petitioner's Writ petition referenced "Bob Sklar" (Petition at ¶9) while the Respondent's Answer references a "Bill Sklar."

or in any jurisdiction, nor is he a representative of any police officers' union.[4] The presence of Sklar prompted the Deputy Attorney General present at the hearing and the CJC to confer as to Sklar's representation of Petitioner before the board.[5] After conferring with the Deputy Attorney General, the CJC determined that Sklar could not represent Petitioner.[6] Petitioner was informed by the CJC that he could continue on *pro se* or he could seek counsel from a licensed Delaware attorney.[7] At that point, Petitioner asked and was granted a third continuance of the hearing.[8]

3. Petitioner filed a Writ of Mandamus with this Court on December 29, 2020. Petitioner seeks (1) a determination allowing him to use Sklar as his representative despite not being a licensed attorney in any jurisdiction; (2) an order forbidding the CJC to seek counsel from the Deputy Attorney General during hearing proceedings; and (3) an order forbidding Ellendale from seeking legal advice from the CJC. Petitioner argues that such relief should be granted because the "plain reading of 11 Del. C. §9205(b)...seems to clearly indicate that...the choice of being represented by legal counsel [is that of the Petitioner's]."[9] Further, Petitioner argues that in order

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[4]Respondent's Answer Brief at ¶2.

[5]*Id.*

[6]*Id.*

[7]*Id.*

[8]*Id.*

[9]Petition for Writ of Mandamus at 3. The quote is taken from a sentence that appears to be cut off and the best estimation of what Petitioner meant to say is that the choice of having a licensed attorney represent him was his and that he could chose a non-licensed representative if he so chose.

to secure an impartial hearing by the CJC, the provisions governing such administrative hearings under the Law Enforcement Officers Bill of Rights (hereafter "LEOBOR") do not provide "for the board to have legal counsel in exercising their duties."[10] Respondent's argument is that Petitioner does not have a legal right for the relief sought in the Writ of Mandamus.

Standard of Review

4. The Superior Court may issue Writs of Mandamus commanding lower courts, administrative agencies, or public officials "to perform a duty 'to which the petitioner has established a clear legal right.'"[11] However, carrying the burden by the petitioner is not enough to warrant issuance of the Writ. The petitioner must also show "that there is no other adequate remedy available."[12]

Discussion

5. Petitioner states that the plain reading of the statute governing hearing procedures under the LEOBOR indicate that Petitioner may be represented by anyone of his choosing. The referenced portion of the statute in question reads "[t]he prosecuting party and the officer and/or the officer's representative shall be given an opportunity to present evidence and argument with respect to the issues involved.

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[10] *Id.* at 4.

[11] *Hiller v. City of Rehoboth Beach*, 2020 WL 5637053 at *3 (Del. Super. Sept. 18, 2020); citing *Clough v. State*, 686 A. 2d 158 at 159 (Del. 1996).

[12] *Id.*; *Haden v. Bethany Beach Police Department*, 2014 WL 2964081 at *6 (Del. Super. June 30, 2014).

Both the department and the officer may be represented by legal counsel."[13] The plain reading of this section of the statute does not mention anything about selecting representation at one's choosing in the sense that Petitioner wishes this Court to adopt. The clear reading of the statute is that, if Petitioner wishes to be represented by legal counsel before the CJC, he certainly may, or he may choose to represent himself *pro se*.

6. The use of the phrase "legal counsel" in the statute has legal significance. In *Delaware State Bar Association v. Alexander*, the Delaware Supreme Court defined what it meant to have legal counsel as someone who "is deemed to be practicing law" by "furnish[ing] to another advice or service under circumstances which imply the possession and use of legal knowledge and skill."[14] There is no dispute that Petitioner intended Sklar to act as a legal representative on Petitioner's behalf. Petitioner admits as much in his Writ petition.[15] Petitioner's request for relief includes allowing Sklar to represent Petitioner before the CJC. However, granting such relief would require this Court to authorize something that it simply cannot do. There is no loss of an established right to Petitioner by denying his request to utilize a representative not licensed to practice law.

7. Petitioner misconstrues 11 Del. C. §9207, which states "a copy of the decision or order accompanying finding and conclusions along with the written

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[13] 11 Del. C. §9205(b).

[14] *Delaware State Bar Association v. Alexander*, 386 A. 2d 652 at 661 (Del. 1978).

[15] Petition for Writ of Mandamus at ¶9.

action and right of appeal, if any, shall be delivered or mailed promptly to the law-enforcement officer or the officer's attorney or representative of record."[16] Although Delaware law has not had to answer the question of whether this provision does, as Petitioner phases it, "contemplate[] three (3) distinct people," the above referenced explanation forbidding unauthorized individuals from practicing law in the State of Delaware dispels such an argument. Only those who are licensed to practice law in the State of Delaware may do so.

8. Additionally, Petitioner characterizes the presence of Chief of the Ellendale Police Department as Ellendale's use of an unlicensed representative. This is simply unfounded. The Police Chief's presence at the hearing was to provide evidence, likely in the form of testimony, not to offer legal advice to Ellendale. Nothing in the record, aside from assertions from the Petitioner, indicates that Ellendale intended to utilize the Police Chief as legal counsel in this matter before the CJC.

9. Petitioner's argument that "[t]here is no provision in the LEOBOR under the hearing procedures which permit the CJC to provide legal advice to the tribunal" is also without merit. Petitioner seems to think that, if the provisions under LEOBOR do not provide for certain procedural actions, then that ends the search for authority over procedural matters involving LEOBOR hearings. However, the Delaware Code is clear.

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[16] 11 Del. C. §9207.

10. Section 9205(b) indicates that hearings under LEOBOR "shall be conducted within the department."[17] The Delaware Department of Justice (hereafter "DDOJ") is authorized "to provide legal advice...for administrative offices, agencies, departments...concerning any matter arising in connection with the exercising of their official powers or duties...."[18] The CJC is "an agency of the State of Delaware" which is entitled to legal counsel from the DDOJ.[19] Furthermore, there is no conflict of interest, as alleged by Petitioner, "for one Deputy Attorney General to assume a representative role on behalf of an employing agency while another Deputy Attorney General assumes an advisory role on behalf of an administrative board."[20]

11. One final note. Petitioner requests in his Writ of Mandamus an order that prevents the DDOJ from also providing legal counsel to Ellendale. The Court finds this portion of the Writ moot because Ellendale is being represented by outside counsel and is not receiving any legal advice from the DDOJ.[21]

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[17] 11 Del. C. §9205(b).

[18] 29 Del. C. §2504(2).

[19] *Stump v. Town of Middletown*, 2018 WL 3814590 (Del. Super. Aug. 9, 2018).

[20] *McGee v. Council on Policy Training*, 2014 WL 662327 at n54 (Del. Super. Jan. 17, 2014).

[21] *See* Letter to Chambers, dated February 1, 2021, from Craig T. Eliassen, Esq. on behalf of Ellendale joining in support of CJC's Motion to Dismiss.

Conclusion

12. Petitioner has failed to show that a legal right to the remedies requested have been established. Furthermore, no Constitutional rights are implicated by denying Petitioner's Writ of Mandamus. Petitioner has simply misconstrued Delaware law.

WHEREFORE, because of the reasons stated above, this Court **DENIES** Petitioner William Paskey's petition for a Writ of Mandamus.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh