

(PM 6/04)

M. Elbey, (57634
SECC A-406
12 Administration Rd
Bridgewater, Ma. 02324
1-3-01

Clerk U.S.D.C. - Mass.
1 Courthouse Way
Boston, Ma. 02210

RE: Elbey v. Sheketoff #98-1016346C

Dear Clerk,

Please find for immediate filing & review

Plaintiff's Supplement to
Plaintiff's Motion for Summary Judgment
Sheketoff's Standard of Care To Issue of Law

I am sending the last (2) copies - one by certified mail, the other 1st class due to deadlines.

Thank you.

WMB, pro se

Elbey v. Sheketoff 98-10163 Mew

Certificate/Proof of Service

I the plaintiff Michael Elbey, sent this
Supplement to his Motion for Summary Judgment
to the Clerk U.S.D.C.-Mass, 1 Courtland
way, Boston, Mass. 02110 via U.S. 1st
class U.S. certified mail* and to
Att. Dwyer, 101 Merrimac St., Boston,
Mass. 02114 via 1st class mail all
prepaid on January 4, '01 from
S.E.C.C.-Prison mail.

Mike, pro se

I certify under the pains & penalties
of perjury that the foregoing is true
& correct on this 3rd day of January
2001.

Mike, pro se

* 7099 3400 0010 7041 7682

United States District Court (108)
for the
District of Massachusetts

Michael Elbervy
v.

Civil Action
#98-10163MRC

Robert Sheketoff et al.

Plaintiff's Supplement
to
Plaintiff's Motion for Summary Judgment

Sheketoff's Standard of Care Is Issue of Law

1. The Court, via his 12-4-00 Court Order, allowed this plaintiff until 01-05-01 to submit/file his Motion for Summary Judgment in the above docketed case.
2. The plaintiff, although filing his Motion for Summary Judgment on 1-27-00, takes the liberty of timely filing a Supplement to his Motion. This Supplement is to Part I

(Count II of the complaint - Legal Malpractice due to negligence) - C - Negligence of the plaintiff's Motion for Summary Judgment.

3. Part I-C - Negligence addresses the third element of Legal Malpractice due to negligence. This element is also the "Standard of care" the defendant - Attorney Steffeloff Should have taken regarding defense of the plaintiff in the underlying criminal case.
4. This Supplement information (law argument) is in addition to that already contained in the plaintiff's Motion I-C. This Supplemental information (law argument) is already contained in items I & VIII of the plaintiff's Opposition to Defendant's Summary Judgment. See I-p.3 last P of the plaintiff's Opposition.

Sheketoff's Standard of Care

Is an Issue of Law

The Standard of care defendant-Sheketoff should have taken regarding the underlying defense of Elbery of the E-2 gun charges should be decided by the Court via summary judgment as a matter of law. Standard of care is a legal issue in this instant case.

Per the plaintiff's Motion for Summary Judgment, in particular affs. # 687, the ⑥ gun charges that Sheketoff initially defended Elbery on were decided and disposed of by Mass. District Judge-Zide as a matter of law. There was no argument as to the facts of the arrest as the prosecution declined to show for the alleged 4-3-95 "trial." The District Judge - Zide was presented Ex. C (proof of Elbery's valid F.I.O.) which was an absolute defense (license), see Mass.

C.L.C. 269 10a 1/8 at '94, to the (6)
E-Z gun charges. See LAW-2.

As a result, the gun charges were decided as a matter of law by exactly the same procedure or amount of activity Elbey ordered Shekoff to take from 8-8-94 through February '95. This amounts to no more than a verbal Motion to Dismiss based on a valid F.I.O. license. See affs. #9 thru #15, and see Mallon & Smith, Legal Malpractice, Vol. 4 p. 182 which says the underlying criminal case of 4-3-95, or trial, before Judge Zide determined if an issue in this civil case is one of fact or law and that classification must be maintained in this civil case, above docketed.

Since presentation of proof of the F.I.O. was an absolute defense as a matter of law to the gun charges against Elbey, the issue of standard of care required to prove Shekoff's negligence is one of law to be decided

by the Court in this instant case, i.e.
questions or issues of law are to be
decided by the Court)

As a matter of law Shekoff's
Standard of care regarding defense of
Elberg on the (6) E-2 gun charge
was to present Elberg's F.I.O. or
proof of it to the presiding judge
on the gun case as early as possible.
This exactly as Elberg ordered
Shekoff per affs #9-15.

Had Shekoff done as ordered by
Elberg, see affs #9-15, exactly the same
procedure and decision of law, via the
absolute defense - the valid F.I.O., would
have taken place as at the "trial" before
Zide, except (7) months earlier.

The Standard of care in this
case that Shekoff should have taken
is no more than the duty Shekoff
had as per the plaintiff's Motion I-C
(p. 9-10)^{which}, is an issue of law to be

determined by the Court via Summary Judgment. That is present proof of license - the F.I.D.

Once again, Shekett's duty in this instant case regarding Elbey's defense of the (6) E-2 gun charge is the same as his standard of care - Present the F.I.D. or proof of it to the presiding judge. Both duty & standard of care in this instant case are issues of law to be decided by the Court in the plaintiff's favor because Shekett did not do his duty or perform his, as a matter of law, standard of care. See plaintiff's Motion p.6 - Order f.

As per the plaintiff's Motion, p.6 - Order-f, not only did Elbey give the orders to present the presiding judges with the F.I.D. or proof of it, but Shekett admits and agrees that Elbey gave the order and Shekett admits to refusing the most simple order. This is a compound-ed issue to injure via Shekett's

Negligence.

Once again, the third element of legal malpractice, negligence, is fulfilled as a matter of law. Once by conclusiveness, as per the plaintiff's Motion for Summary Judgment I-C, and here because Shekloff failed to perform (flat-out refused as ordered by his client) his Standard of care that is an issue of law in this instant case.

And of course, there is no need for an expert to testify as to the standard of care Shekloff should have taken.

All elements of Legal Malpractice due to negligence (plaintiff's complaint IP 296) are decided as a matter of law in the plaintiff's favor via Summary Judgment, as per this Supplement and this plaintiff's Motion for Summary Judgment.

MLB p. 1
Michael Elberg 1-4-01