

A. Overview

Stop Abusive and Violent Environments (SAVE), a national victim advocacy organization, is now petitioning the Board of Overseers of the Bar for the disbarment of Mary N. Kellett, Maine License #7576. Ms. Kellett currently serves as the Assistant District Attorney in Prosecutorial District No. 7.

ADA Mary Kellett has repeatedly obstructed another party's access to evidence, has prosecuted a criminal charge that was not supported by probable cause, and has made a false statement of fact to a tribunal. In addition, she has engaged in conduct that is prejudicial to the administration of justice. These violations of the Maine Rules of Professional Conduct have been repeated and long-standing.

If allowed to continue unchecked, her actions could result in placing two minor children under the custody and control of a proven child abuser who has a criminal charge record and a chronic history of severe mental illness. In the words of the 10-year-old son, "my mother would hit everyone in the house. She was a terror to everybody."

In sum, Mary Kellett's repeated instances of prosecutorial misconduct has had the effect of undermining public respect for law. She is dangerous to the even-handed administration of justice. Kellett has been shown to be an enabler of a known perpetrator of child abuse. Therefore, prosecutor Kellett's actions demand disbarment by the Maine Board of Overseers of the Bar in order to assure the safety and tranquility of the citizens of Maine.

The remainder of this Complaint:

1. Summarizes a recent decision of the Maine Supreme Judicial Court arising from the prosecutorial actions of ADA Kellett.
2. Documents how Mary Kellett has violated three of the Maine Rules of Professional Conduct.
3. Enumerates why these violations of the Maine Rules of Professional Conduct represent prosecutorial misconduct.
4. Explains why these instances of prosecutorial misconduct rise to such a level as to justify disbarment.

B. Decision of the Maine Supreme Judicial Court

On September 9, 2010, the Maine Supreme Judicial Court issued a decision in response to an appeal of a judgment entered in the Superior Court (Hancock County, *Cuddy, J.*).¹ The case involved an indictment of Vladek Filler on five counts of gross sexual assault (Class A) and two counts of assault (Class D). The most serious allegation consisted of a claim that the defendant had coerced the complainant to engage in anal sex.

¹ Maine Supreme Judicial Court. State of Maine v. Vladek Filler. September 9, 2010. http://www.courts.state.me.us/court_info/opinions/2010%20documents/10me90fi.pdf

Filler's defense was premised on the theory that his wife, Ligia Filler, had fabricated and exaggerated her allegations in order to gain an advantage in an anticipated custody case involving their minor children.

During the trial, Assistant District Attorney Mary Kellett engaged in four forms of prosecutorial misconduct:

1. She sought to exclude evidence of Mrs. Filler's legal efforts to gain custody of her children, evidence that was central to Mr. Filler's effort to impeach Mrs. Filler's testimony.
2. During her closing argument, ADA Kellett referred to the absence of exculpatory evidence – evidence that she herself had sought to exclude – as proof of Mr. Filler's guilt: "I would ask you where the evidence is to back up his statement that he state in both his opening and his closing that this is a marriage that was ending, this is a child custody, this was a first step in a child custody fight. Where is one piece of evidence about that?"
3. She personalized the proceeding in a way that served the color the jury's perception of the defendant, at one point prompting this rebuke by the judge: "I'm troubled by you going beyond that."²
4. She shifted the burden of proof to the defendant, stating in her closing argument, "there was no evidence that the sexual acts did not occur."

Following a guilty verdict on four counts, the defendant moved for a mistrial. In an almost unprecedented ruling, the trial court Judge Kevin Cuddy ordered a new trial. Explaining its decision, the trial court stated in its March 2-5, 2009 Order:

The focus of the State's arguments were on facts not presented by the Defendant as a result of rulings by the Court during the trial, thereby creating the high likelihood of unfairly prejudicing the Defendant in the eyes of the Jury.

Assistant District Attorney Mary Kellett thereupon appealed the ruling to the Maine Supreme Court.

On September 9, 2010, the Supreme Judicial Court agreed that the defendant had been unfairly prejudiced by the prosecutor's actions and remanded the case for a new trial. The Supreme Court decision states the "State had improperly encouraged the jury to use the absence of evidence regarding the marriage ending and a child custody dispute – evidence that had been excluded based on the State's objection – as a reason to reject Filler's defense."

² Transcript, p. 126.

C. Violations of the Maine Rules of Professional Conduct

Mary Kellett has violated three Rules of Professional Conduct, as delineated below:

*1. A lawyer shall not unlawfully obstruct another party's access to evidence*³

The defense attorney made multiple discovery requests for records and audio/videotapes containing exculpatory evidence over a two-year period:

- a) On September 6, 2007 defense attorney Daniel Pileggi writes a general discovery request for all documents, medical records, and recordings to Mary Kellett.
- b) On October 5, 2007 Pileggi writes a specific material request to Kellett regarding an incident involving Ligia Filler and a Sheriff's deputy.
- c) On October 12, 2007 Pileggi files a motion for discovery stating: "The District Attorney's office has not responded to requests."
- d) At a October 25, 2007 hearing, Mary Kellett produces a 3-page incident report stamped "Received May 29, 2007," but does not provide the numerous records or recordings previously requested.
- e) On October 31, 2007 Pileggi sends another request to Kellett for the referenced dispatch records and audio and video recordings of the incident.
- f) On May 13, 2008 Pileggi subpoenas Kellett's assistant for the material.
- g) On May 13, 2008 Dan Pileggi directly subpoenas the deputy who created the records.
- h) On May 30, Judge Anderson approved the Motion for Discovery for several of the documents requested in the May 13, 2008 subpoena.
- i) Two weeks later attorney Pileggi faxes a letter to Mary Kellett stating, "I have been advised by Chat Wilmot of the Ellsworth Police Department that you advised him to not comply with my subpoena in the referenced matter." After citing the relevant Bar Rules, Pileggi concluded, "In short, the Bar Rules prohibit you from giving advice to Officer Wilmot, who is entitled to independent representation. To the extent that you have advised him, or any other witness, to ignore a subpoena, your conduct violates Bar Rule 3.6."
- j) On June 3, 2008 Pileggi obtains a Court Order to compel Mary Kellett to produce the referenced dispatch records and audio and video recordings of the incident.
- k) On July 16, 2008 Pileggi sends another reminder for these Court Ordered records.
- l) On September 3, 2008 Pileggi advises Kellett that he would be forced to seek a contempt finding or discovery sanctions, "given the officers' failure to supply the tapes/cds."
- m) Later the same day, Kellett replies to Pileggi, now offering to provide the audiotapes, but also making the claim that "the video could not be copied, but that it doesn't really show anything."
- n) On September 15, 2008 Pileggi renews his request to view the videotapes.
- o) Later that same day Kellett curtly replies, "call the officer – make arrangements to view with him. mnk"
- p) Later, Pileggi's legal assistant and Pileggi again attempt, unsuccessfully, to obtain the video directly from the officer and the sheriff's department.

³ Maine Rules of Professional Conduct. 3.4(a)

- q) On December 18, 2008 Pileggi again subpoenas “Copies of all video recording of Ligia Filler” from the deputy for trial. They are not provided.
- r) On May 7, 2009 after the trial, the defendant is told by the deputy that Mary Kellett had all records and recordings in her possession, but he couldn’t comply with subpoenas without her approval. The deputy is subpoenaed two more times. The deputy then notifies the defense that his Court Ordered recordings have been erased.

In sum, Mary Kellett never provided the Court Ordered video/audiotapes, dispatch records, or the medical records. She allowed important exculpatory evidence to be destroyed. This constitutes an egregious violation of professional ethics.

2. The prosecutor shall refrain from prosecuting a criminal charge that the prosecutor knows is not supported by probable cause⁴

Prosecutor Mary Kellett knew of these facts before commencement of the trial:

- a) In Maine, an allegation must meet the test of “not being inherently incredible” (*State v. Moores*, 2006 ME 139) in order to prosecute an allegation of rape. But the allegation of forced anal intercourse was inherently incredible for the following reasons:
 - i. Anal intercourse requires one party to bend forward sharply at the waist. This was physically impossible because the assault allegedly occurred in a small laundry area with the two parties tightly wedged in a 24-inch space between the dryer and an immovable sink. Mrs. Filler is only 59 inches tall.
 - ii. As reported by her children who came home an hour after the alleged assault, Ligia Filler did not evidence any cuts, bruises, abrasions, or scars from the alleged event.
 - iii. When Ligia Filler sought medical attention, the physical examination did not reveal any cuts, bruises, abrasions, or scars from the alleged event. Ms. Filler refused to allow the doctor to use a rape kit to confirm or disconfirm whether the alleged rape had taken place.
 - iv. Subsequent forensic examinations of the parties or of the laundry room failed to identify any corresponding facial imprints, arm prints, finger prints, semen, blood, fecal matter, skin cells, or hair.
- b) Ligia Filler had previously engaged in criminal actions:
 - i. On October 27, 1991, Ligia was charged for the alleged assault and battery of Carlos Badias, who was her current boyfriend. The Criminal Complaint is available for inspection online.⁵
 - ii. On April 24, 2007, she made death threats toward Vladek Filler and toward law enforcement personnel.⁶
 - iii. The couple’s 10-year-old son testified that his mother had previously punched Mr. Filler in the face.
 - iv. The couple’s son stated during discovery that his mother regularly abused him.

⁴ Maine Rules of Professional Conduct. 3.8(a)

⁵ <http://www.fillerfund.com/criminalcharges.htm>

⁶ http://www.youtube.com/watch?v=GSKIcOhjaJg&feature=player_embedded#at=20

- c) Ligia Filler had a long history of mental illness, including several suicide attempts. On April 24, 2007, for example, Ligia repeatedly called 911. That evening she was apprehended on the road, barefoot in a bra, holding her one-year son in her arms. According to police on the scene, Ligia was “flipping out” and “certifiable” for admission to a mental facility.⁷
- d) Ligia Filler had an evident motive to make a false allegation: to gain custody of the couple’s children in a concurrent divorce action. During the same time period she had requested four restraining orders, orders that would have served to place the children in her custody. Ligia Filler had engaged in similar actions 16 years before during the dissolution of her previous partner relationship.
- e) Ligia Filler had a documented history of making false allegations. For example, an order of the Ellsworth District Court found that Mrs. Filler’s accusation that defendant molested the children “was false and known to be false. She has shown a capacity to manufacture claims.”⁸

Hence, there was no reasonable basis for concluding the allegations reached the level of probable cause.

*3. A lawyer shall not knowingly make a false statement of fact or law to a tribunal*⁹

As documented in Section C.1 of this Complaint, ADA Kellett engaged in a series of legal maneuvers to delay and prevent the release of exculpatory documents, including Ligia Filler’s medical records of her visit to a physician shortly after the alleged sexual assault.

But during the January 12, 2009 trial, Kellett stated before the bench, “the State [referring to her prosecutor’s office] did not oppose the access to the medical records.” This was a direct misrepresentation of the truth.

D. ADA Mary Kellett Engaged in Prosecutorial Misconduct

The Maine Rules of Professional Conduct define professional misconduct as follows:

8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or unlawful act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

⁷ http://www.youtube.com/watch?v=GskIcQhjaJg&feature=player_embedded#at=20

⁸ Ellsworth District Court. December 3, 2009. Findings at Page 4, Paragraph 1.

⁹ Maine Rules of Professional Conduct. 3.3(a)(1)

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;

The conduct of ADA Kellett fulfills criteria (a), (c), and (d), as explained below:

1. Engage in violations of the Maine Rules of Professional Conduct

Previous sections of this Complaint have documented how Mary Kellett violated the following three provisions of the Maine Rules of Professional Conduct:

- A lawyer shall not unlawfully obstruct another party's access to evidence
- The prosecutor shall refrain from prosecuting a criminal charge that the prosecutor knows is not supported by probable cause
- A lawyer shall not knowingly make a false statement of fact or law to a tribunal

2. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation

See Section C.3. above.

3. Engage in conduct that is prejudicial to the administration of justice

The Supreme Judicial Court decision of September 9, 2010 contains the following footnoted statement on page 6: "In addition, Filler raised several other instances of alleged prosecutorial misconduct in support of his motion for a new trial." Following is evidence for four of these allegations:

- a) Made comments based on facts not in evidence

The trial court instructed prosecutor Kellett to not make statements regarding the child custody dispute. Despite this fact, Kellett made several statements regarding custody issues during the course of the trial, causing the judge to issue this rebuke:

The web of emotional intrigue that might be associated with other parallel issues such as child custody is not something that's particularly relevant to these charges from the court's perspective...I'm troubled by you going beyond that.¹⁰

- b) Shifted the burden of proof

In her closing argument, prosecutor Kellett told the jury, "there was no evidence that the sexual acts did not occur," implying that the defendant should be considered guilty unless he proved otherwise.

¹⁰ Transcript page 126.

Additionally, Kellett repeatedly referred to the accuser as the “victim.” The act of designating a person as a “victim” should be made *after*, not *before*, a judicial finding. This verbal ploy has the effect of shifting the burden of proof to the defendant.

c) Personalized the case

The prosecutor repeatedly attempted to portray the defendant in a negative light, depicting him as abusive and controlling.

For example, at one point the prosecutor implied to the jury that the defendant had told his wife that he would “make sure you never see the kids” and that “no one will believe you,” even though the record contained no such evidence.

d) Evoked the jury’s passions, prejudices, and biases

The trial court was troubled by the emotional thrust of the prosecutor’s line of questioning, leading to the judge making this observation:

The overall emotional tenor and attempting to get into the reason for this lady ultimately leaving Mr. Filler’s house sometime after the 20th may be germane to the child custody action, but is not germane to this gross sexual assault charge. We have already created an environment which is extremely difficult.¹¹

In summary, ADA Kellett’s prosecutorial actions have repeatedly violated the Maine Rules of Professional Conduct, which constitutes professional misconduct.

E. Mary Kellett’s Prosecutorial Misconduct is Egregious and Warrants Disbarment

The decision to disbar an attorney is not to be taken lightly. The recommendation to disbar ADA Mary Kellett rests on a number of considerations:

1. Her wrong-doing involves multiple actions over a period of years.
2. Her actions were intentional.
3. Her wrong-doing had direct harmful consequences to the administration of justice.
4. Her continued involvement in this case could place the Filler children at risk of further abuse.

Although the focus of the current Complaint is the case of State of Maine v. Vladek Filler, there have been numerous prior cases stretching over several years in which Kellett appeared to ignore normal probable-cause and/or due process standards. In each of these cases, the defendant was found innocent on all charges.

¹¹ Transcript page 127.

According to media accounts, ADA Kellett:

1. Did not provide the jury with any physical evidence of assault¹²
2. Ignored “beyond a reasonable doubt” evidentiary requirements¹³
3. Ignored important discrepancies in suspect identification procedures¹⁴
4. Discounted the possibility of consensual sexual relations^{15,16,17}
5. Glossed over the accuser’s clear motive for making a false accusation¹⁸
6. Was not deterred by the fact that the alleged incident occurred 10 years prior to the filing of the case¹⁹
7. Allegedly breached standard witness interview procedures, then attempted to block release of the forensic tapes.²⁰

F. Conclusion

The trial of Vladek Filler resembled a “Salem Witch Trial,” in the words of court-appointed attorney Neil Fishman.

From a policy perspective, it is important that a prosecutor not be allowed to repeatedly use the power and resources of the State to target innocent persons. This undermines the public’s respect for the criminal justice system.

From a child advocacy perspective, Stop Abusive and Violent Environments is very concerned that ADA Kellett’s actions may place vulnerable children at risk of further maternal abuse. Kellett’s continued involvement in this case represents a potential menace to vulnerable children, one of whom has expressed his strong preference to not live with his mother.

¹² *State of Maine v. Christopher Gilley*. “However, prosecuting attorney Mary Kellett presented no physical evidence to the jury. Neither the girl nor her clothing were examined after she made the report.”

¹³ *State of Maine v. Michael D. Weber*. According to defense attorney Steven Juskewitch, “These allegations didn’t even meet the ‘more likely than not’ standards, and the state went ahead with the same evidence to prove ‘beyond a reasonable doubt.’”

¹⁴ *State of Maine v. Brian J. Clough*. “The girl described the man as ‘an old man in his 60s.’ The defendant in the case, Brian Clough, was 20 years old.

¹⁵ *State of Maine v. Scott Oakes*. After the defendant was found innocent, prosecutor Kellett told the press, “I don’t buy the ‘she likes it, she wanted it’ defense.”

¹⁶ *State of Maine v. Joshua Busby*. The testimony of others attending the party conspired that “the woman was being friendly with Busby throughout the night and again the next morning.”

¹⁷ *State of Maine v. Shawn A. Robinson*. “All testified that the young woman did not seem upset and the two emerged from the bedroom.”

¹⁸ *State of Maine v. Raymond Currier*. The defense attorney noted that the 16-year-old girl “had fabricated the allegations in order to avoid punishment for misbehavior at home.” The misbehavior included “taking money to school, stealing money from her mother, and lying.”

¹⁹ *State of Maine v. Jerome Millary*. The case involved an alleged action that had occurred 10 years previously during the dissolution of a marriage.

²⁰ *State of Maine v. Raymond Currier*. According to defense attorney Steven Juskewitch, “I’d like to review it with experts. I think there are some significant lapses of protocol for conducting the forensic interview.” Then prosecutor Kellett attempted to block release of the tapes, stating, “We don’t like to release those tapes. We want to keep close control over these.”

In addition, SAVE is worried that the extensive publicity surrounding this case may have the effect of undermining the credibility of future victims of rape, and of diverting scarce criminal justice resources away from the true victims of partner violence.

The Maine Rules of Professional Conduct state that any lawyer who violates “any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules” is considered to have engaged in professional misconduct.²¹ ADA Mary Kellett’s prosecutorial misconduct is long-standing and egregious, and requires disbarment to protect the citizens of Maine from future prosecutorial abuses.

This case is considered to involve legal principles of national import and is now attracting national media attention^{22,23,24,25,26}. For these reasons, we are also bringing this Complaint to the attention of Gov. Paul LePage and Attorney General William Schneider.

²¹ Maine Rules of Professional Conduct. 8.4(a).

²² Carey Roberts. In Maine, It Doesn’t Pay to be a Man. *Renew America*. February 1, 2010.

²³ Robert Franklin. Vladek Filler Gets a New Trial. *Fathers and Families*. September 13, 2010.

²⁴ TJ Ward. Cry Rape! The Plague of False Accusations. Radio interview. March 15, 2011.

²⁵ False rape claims exposed on AVoiceforMen Radio with T.J. Ward. *Current.com*. March 10, 2011.

²⁶ Robert Franklin. Vladek Filler’s New Trial Scheduled for May. *Fathers and Families*. March 25, 2011.