

calculations by Deputy Gnazinski; Humphrey's alleged failure to comply with court orders and subpoenas to turn over evidence; Humphrey's alleged subpoena of witnesses to come in to the district attorney's office to provide statements related to the Raisbeck case; and the deputy district attorneys', including both deputy district attorney Timothy Verhoff and deputy district attorney Judy Schwaemle, asserted failure to investigate Humphrey's handling the Raisbeck matter, and a potential scheme by the district attorney's office to "cover up" misconduct, malfeasance, and criminal conduct allegedly engaged in by Humphrey during the Raisbeck trial, as well as other criminal trials. See copies of Humphrey depositions, Gnazinski deposition, and Krenz deposition made part of the attached Affidavit of Julie M. Falk.

Sommers has abused his powers in taking the depositions of the Dane County investigators, as well as the Dane County district attorneys, in order to enter into a fishing expedition to prove a cover up, misconduct, malfeasance, and criminal conduct on behalf of the district attorney's office during both the Raisbeck trial, as well as other criminal trials handled by Humphrey.

The actions of the district attorney's office and its investigators during the Raisbeck trial have no relevancy to the four corners of the disciplinary complaint, are not likely to lead to the discovery of admissible evidence, and are not relevant to Sommers' affirmative defenses, as it relates to Sommers' misconduct. This disciplinary action is not about any alleged misconduct or malfeasance on behalf of the district attorney's office, but alleged misconduct by Sommers during the course of the Raisbeck trial.

C. ~~Sommers should be prohibited from retrying Humphrey's disciplinary proceeding.~~

The OLR already thoroughly investigated allegations of misconduct, as it relates to Humphrey's

actions during the Raisbeck trial. The OLR determined that Humphrey engaged in misconduct, brought the allegations of misconduct to the Preliminary Review Committee, which found cause to proceed against Humphrey, and a hearing was held, where Referee Russell Hanson found that Humphrey engaged in misconduct. See Referee Hanson's August 2, 2007 Report and Recommendation attached hereto. Humphrey's disciplinary matter is currently on appeal with the Wisconsin Supreme Court.

Sommers has made it clear he disagrees with the allegations the OLR brought against Humphrey and believes OLR should have prosecuted Humphrey for further alleged misconduct. Sommers' disciplinary proceeding is not the correct forum for Sommers to retry the Humphrey disciplinary matter and delve into any instance of misconduct or malfeasance that Sommers believes the OLR should have charged against Humphrey in Humphrey's disciplinary proceeding.

II. OLR is entitled to a protective order as to the whole of the pre-charging process.

Sommers should be prohibited from deposing as to any aspect of the pre-charging process, because: (a) he is not entitled in this proceeding to investigate the specifics of OLR's investigation of him; (b) SCR 22.40(1) precludes the OLR from providing its file, notes and documents collected during the investigative process; (c) Sommers cannot delve into information that is privileged; (d) Sommers cannot obtain information that is subject to the work product doctrine; and (e) Sommers is not entitled to delve into the issue arising out of OLR's processing of this matter prior to its filing of the disciplinary complaint.

A. This referee already concluded that Sommers' cannot bring a counter-claim against OLR alleging malfeasance.