

## Kevin T. Glasheen Sued By Texas State Bar For Alleged Misconduct In Representing Two Exonerated Men

A Disciplinary Petition has been filed by the State Bar of Texas against Lubbock attorney Kevin T. Glasheen for alleged professional misconduct in his representation of Steven C. Phillips and Patrick Waller. The petition was filed in the District Court for the 99th Judicial District in Lubbock County on February 7, 2011, after the Texas Supreme Court appointed Judge Robin M. Darr from Midland to preside over the case.

Glasheen elected to have the petition's allegations tried in a public proceeding, instead of by an internal review process. The disciplinary rules require that a visiting judge hear the case to avoid any conflict of interest with a Lubbock County judge familiar with Glasheen.

Phillips and Waller separately retained Glasheen to represent them after they were exonerated of their convicted crimes.

Phillips was exonerated in August 2008 of rape after being wrongly imprisoned for more than 25 years. He signed a contingent fee contract with Glasheen in December 2008. Glasheen agreed to "investigate, evaluate and pursue to settlement or judgment all claims for damages that [Phillips] may have against the City of Dallas and State of Texas and others resulting from his incarceration." In exchange, Phillips agreed to pay Glasheen 40% of all money obtained through a civil rights lawsuit, which increased to 45% if the money was recovered after an appeal. Phillips also agreed to pay Glasheen's expenses and fees up to a maximum of 50% of the total money paid to Phillips. Phillips also agreed to pay Glasheen 25% of all the money he was entitled to receive under Texas' administrative procedure for compensating a person declared innocent of their convicted charges.

Waller was exonerated and released on July 3, 2008 of robbery and kidnapping after being wrongly imprisoned for 16 years. He signed a contingent fee contract with Glasheen on July 14, 2008 — 11 days after his release. Waller's contract was similar to Phillips contract with two exceptions. First, Waller agreed to pay Glasheen 33% of all the money he was entitled to receive under Texas' administrative procedure for compensating a person declared



Kevin Glasheen  
(Glasheen, Valles, Inderman  
,LLP website photo)

innocent of their convicted charges. Second, Waller's contract included a provision that 40% of all money paid to Glasheen would be paid to two other attorneys. One of those attorneys is Jeff Blackburn, co-founder and lead counsel of the Innocence Project of Texas based in Lubbock.

Under Texas' compensation law a person declared innocent is entitled to a one-time payment of \$80,000 for each year of wrongful incarceration, plus a lifetime annual annuity. [Endnote 1] Making a claim involves filling out a one page form and submitting it to the Texas Comptroller of Public Accounts along with public documents proving the person has been declared innocent. Glasheen's contracts with Phillips and Waller entitled him to 25% and 33% respectively, of all the money they were paid under the compensation law.

Phillips terminated the contract with Glasheen on September 16, 2009 because he had neither filed a lawsuit nor a claim for the compensation Phillips was owed under Texas law. On the next day Phillips filed a lawsuit in Dallas County seeking a declaratory judgment that Glasheen was not entitled to any of the money due Phillips under Texas' compensation law. Phillips' lawsuit alleged that during the more than ten months Glasheen was retained he "had performed no meaningful legal services for Mr. Phillips." Under the contract Glasheen could claim to be owed about \$1 million of the total state compensation Phillips filed to receive after he terminated the contract.

Waller likewise terminated the contract with Glasheen because he had neither filed a lawsuit nor a claim for the compensation Waller was owed under Texas law. In December 2009 Waller filed a lawsuit in Dallas County seeking a declaratory judgment that Glasheen was not entitled to any of the money due Waller under Texas' compensation law. Waller also sued Jeff Blackburn. Under the contract Glasheen could claim to be owed over \$600,000 of the total compensation state Phillips filed to receive after he terminated the contract, of which over \$100,000 would go to Blackburn.

After filing their lawsuits Phillips and Waller filed separate ethics complaints against Glasheen with the State Bar of Texas. After Glasheen was given the opportunity to respond in writing, a staff attorney in

the Office of the Chief Disciplinary Counsel determined there was "just cause" to charge Glasheen with a number of ethics violations. The Disciplinary Petition filed on February 7, 2011 in Lubbock County alleges regarding Phillips complaint:

1. Glasheen failed to provide Phillips with sufficient information for him to make an informed decision to hire Glasheen.
2. Since a lay person with no legal skill can fill out the one page form and acquire the public documents necessary to file a Texas state compensation claim, it was unconscionable for Glasheen to charge 25% of the amount Phillips was owed under the law to file a claim (Which Phillips did after he fired Glasheen.)
3. Texas state law prohibits the assignment to Glasheen or encumbrance of any of the anticipated annuity money Phillips was owed under the compensation law.

The Petition alleges regarding Waller's complaint:

1. Glasheen failed to provide Waller with sufficient information for him to make an informed decision to hire Glasheen.
2. Since a lay person with no legal skill can fill out the one page form and acquire the public documents necessary to file a Texas state compensation claim, it was unconscionable for Glasheen to charge 33% of the amount Waller was owed under the law to file a claim (Which Waller did after he fired Glasheen.)
3. Texas state law prohibits assignment to Glasheen or encumbrance of any of the anticipated annuity money Waller was owed under the compensation law.
4. Glasheen's contract with Waller unethically included a provision that 40% of all money paid to Glasheen would be paid to two attorneys who "did not agree to assume joint responsibility for the representation of Waller nor did they provide professional services to Waller."

The petition describes that Glasheen's contracts with Phillips and Waller "constitute an arrangement for or a charge of an illegal fee or a fee prohibited by law."

Glasheen can request a jury trial, he can conduct discovery in accordance with the Texas Rules of Civil Procedure, and the allegations in the petition must be proven by

**Glasheen cont. on page 11**

## Glasheen cont. from page 10

the State Bar's Chief Disciplinary Counsel by a preponderance of the evidence.

If Glasheen is found guilty of misconduct, Judge Darr can impose as punishment a sanction ranging from admonishment to disbarment. Glasheen can appeal a guilty finding or the sanction to the Texas Court of Appeals, and if necessary to the Texas Supreme Court.

What Glasheen did do during the period of time he represented Phillips and Waller was lobby the Texas Legislature to increase the lump sum payment to a person declared innocent by a court from \$50,000 to \$80,000 per year of incarceration, and to add the lifetime annuity. In May 2009 the Texas Legislature approved the additional compensation and lifetime annuity.

Glasheen's lobbying of the legislature is not mentioned in the Disciplinary Petition because neither Phillips nor Waller hired Glasheen as a lobbyist, and payment to him for his lobbying activities is not included in their respective contracts.

Glasheen had contracts with a number of exonerees similar to Waller's contract. Phillips contract was the only one that didn't

include a provision that a significant percentage of the state compensation money would be paid to other attorneys as an apparent "referral fee." Glasheen didn't file a lawsuit on behalf of those exonerees, but it is estimated their contracts obligated them to pay him between \$5 and \$8 million of the total money they were paid under Texas' compensation law. After Phillips and Waller filed their lawsuits, Glasheen told the Dallas Morning News, "There is no doubt that we made a lot of money, and we earned it."

The State Bar's complaint against Glasheen has helped fuel the public debate about questionable practices by lawyers involved in seeking compensation for a person exonerated of their convicted crimes. The Innocence Project of Texas provided pro bono assistance in the exoneration of the people who subsequently signed contracts with Glasheen that contained a provision that a significant percentage of the money paid to him would be paid to attorneys not involved in obtaining compensation – namely the chief counsel for the Innocence Project of Texas. Another situation is that the non-profit Innocence Project in New York has assisted in the exoneration of a number of people who subsequently retained Barry Scheck and Peter Neufeld's private New York law firm – Neufeld, Scheck & Brustin,

LLP [Endnote 2] – to pursue obtaining compensation. On June 4, 2010, attorney Scott H. Greenfield wrote on his Simple Justice blog about Scheck after his private law firm settled Barry Gibbs' civil rights lawsuit against New York City for \$9.9 million: "First, his innocence project obtained Gibbs' freedom. Then, in his private lawyer capacity, he obtained compensation. Yes, he took his third, but nobody hands Scheck those sweet suits he wears for free, you know."

Maureen Ray, Special Administrative Staff Attorney for the Office of the Chief Disciplinary Counsel, told Justice Denied that even when it involves a trial, the disciplinary process isn't necessarily protracted. So it is possible the misconduct allegations against Glasheen could be resolved sometime in 2011.

### Endnotes:

- 1 The Texas Legislature increased in May 2009 the payment to \$80,000 per year of wrongful incarceration or part thereof from \$50,000, plus they added lifetime annuity.
- 2 The name was changed to Neufeld, Scheck & Brustin, LLP on June 12, 2009 from Cochran, Neufeld & Scheck, LLP

### Additional Sources:

Innocence Project counsel criticized for profiting on exonerees, *The Dallas Morning News*, December 11, 2009

## Man Uses Google Earth To Overturn Conviction

Wrongly convicted persons are increasingly able to use technology to establish their innocence. In what is believed to be a first, a man in Australia has used the Google Earth software program to overturn a conviction.

Mastaa Al Shakarji is a 24-year-old 4th year pharmacy student at James Cook University in Townsville, Queensland, Australia. His family emigrated to Australia from Iraq in 2002.

In April 2009 Al Shakarji was issued a speeding ticket for going 36 mph in a 25 mph school zone in Bowen, about 125 miles east of Townsville. He told the officer that he wasn't speeding and the officer's radar must have picked up another car.

Al Shakarji contested the ticket. Prior to his June 2010 trial in the Bowen Magistrates Court he conducted research with Google Earth that enabled him to use satellite imagery to navigate the road where he was given the ticket. He found that he would have been at the top of a hill and not even visible to the

police car at the time the officer claimed on the ticket that he was speeding. Based on Al Shakarji's research the officer clocked a different vehicle speeding down the hill.

The judge refused to consider Al Shakarji's Google Earth evidence that his car had been misidentified as the speeding vehicle. The judge found him guilty and fined him \$200 and court costs of \$71.50.

Al Shakarji appealed to the Brisbane District Court, arguing that "Based on the timing guidelines to view the vehicle speeding and then administer the radar, his vehicle would have been at the top of the hill and thus "not visible to the officer.""

The appeals court overturned Al Shakarji's conviction, ruling there is "reasonable doubt as to whether the appellant was exceeding the speed limit." The court also ruled the Magistrate unduly restricted Al Shakarji's cross-examination of the officer.

When interviewed by the Townsville Bulletin on January 3, 2011, Al Shakarji described why he went to such length's and expense to fight a \$200 traffic ticket (the appeals court in Brisbane is 845 miles from Townsville):

"I am from a country rife with corruption in the police and the government, but Australia is so different. In Iraq I couldn't stand up to speak out but here you can when you don't think it's right so why wouldn't you? The justice system is great in this country everyone is the same under the law. You don't realise how lucky you are in Australia because you can go to court and ask the police questions."



Mastaa Al Shakarji holding the ticket that he used Google Earth to prove misidentified his car as speeding near a school.

Al Shakarji ingeniously used Google Earth to establish his car had been misidentified as the speeding vehicle, but it is just a matter of time before Google Earth and similar technology tools will be used to assist in proving a person accused or convicted of a serious felony is innocent.

### Sources:

Google used to appeal ticket, *Townsville Bulletin*, January 4, 2011.