

James Ostrowski
Attorney at Law

63 Newport Ave.
Buffalo, New York 14216

(716) 435-8918
bestpro@roadrunner.com

July 29, 2019

Hon. Thomas P. Brown
Allegany County Court
7 Court St.
Belmont, New York 14813-1084

BY FAX NO. _____.

Re: IN RE BRIDGETTE A. TOJEK
Firearms License CW 10693
Hearing date: July 31, 2019

Dear Judge Brown:

I have been retained by Bridgette A. Tojek in connection with this proceeding and the suspension of her pistol license.

I have serious concerns about the way this matter has been handled and many questions about the procedures and rules the Court will be relying upon at the hearing. I am therefore requesting a short adjournment until these issues are clarified.

I have challenged the entire pistol permit regime in this state in federal court with the matter currently pending in the United States Court of Appeals and I will, for the record, make all such pending objections in this case on behalf of Ms. Tojek. See, *Libertarian Party of Erie Cnty. v. Cuomo*, 300 F. Supp. 3d 424 (W.D.N.Y. 2018) (rejecting all constitutional challenges to the pistol permit law); *Libertarian Party of Erie Cnty. v. Cuomo*, (2nd Cir. 18-0386-cv) (decision pending.). Although the District Court denied all of our challenges to the law, we believe that we stand a good chance of prevailing in the appellate courts now that the Supreme Court has granted certiorari in a case challenging the lenient standard of review applied to gun laws in New York. See, *NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ROMOLO COLANTONE, EFRAIN ALVAREZ, and JOSE ANTHONY IRIZARRY, v. THE CITY OF NEW YORK, U. S. Supreme Court NO. 18-280*.

Thus, I have the following objections/questions at this point.

1. We object to the Court holding an ex parte proceeding with no notice to Ms. Tojek, which resulted in the suspension of her permit for reasons that have not been disclosed. This action violates her right rights under the Second Amendment and due process clauses of the State and Federal Constitutions.
2. We object to holding a hearing without knowing the issues to be tried at the hearing as we obviously cannot prepare testimony or evidence without knowing the issues to be tried.
3. We would like to know if there are any court rules or procedures governing this proceeding.
4. We would like to know if this is an ex parte proceeding. If not, who is the other party?
5. Is this a judicial proceeding or an administrative hearing?
6. Do we have the right to subpoena witness?
7. Do the rules of evidence apply?
8. Is there a prosecutor or plaintiff, or will the Court itself assume that role?
9. If the Court will be prosecuting this matter, we would object on due process grounds as the Court may not be both prosecutor and impartial adjudicator of the issues. Courts are and must be impartial adjudicators of disputes between litigants who urge conflicting positions for consideration. See, *United States v. Cross*, 128 F3d 145 (3d Cir. 1997). “[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of *issues defined in advance of the proceeding*.” *Strickland v. Washington*, 466 U. S. 668, 685 (1984) (emphasis added). If the Court becomes the prosecutor, while simultaneously remaining the Court, the respondent is deprived of an impartial tribunal in its dispute with the new entity, the plaintiff/prosecutor/court.
10. Which party has the burden of going forward with the evidence?
11. Which party has the burden of proof and what is the relevant standard?
12. We ask the Court to provide copies of all documents received in this matter or, if information was provided orally, we request that such matters be disclosed on the record prior to the hearing.
13. Finally, we request a precise statement of the specific issues to be resolved at the hearing.

We also believe that the Court should consider recusal in this matter for the following reasons:

1. The Court has already received ex parte communications and made rulings based on those communications.
2. The Court has ordered the respondent to appear at a hearing but failed to explain what issues will be tried at the hearing, apparently imposing on the respondent the burden of explaining why her permit should not be revoked.

3. The Court's reference to the respondent to bring in "mental health evaluations", without explaining why, is suggestive of a prejudgment on that question.

I am aware that a judicial ethics opinion which concluded that pistol permit judges must strictly comply with the code of judicial ethics was mysteriously rescinded on March 29, 2018. See, Opinion 17-166. It was replaced by an opinion which remarkably reached the exact opposite conclusion on the same date. See, Joint Opinion 18-57/17-166. Without belaboring the point here, we believe that the rescinded opinion is a proper and true statement of the law.

Unless these issues are resolved, it will be extremely difficult for me to properly represent my client at such an amorphous and novel proceeding. Specifically, each of these issues, if not resolved, presents issues of whether the respondent's state and federal due process and Second Amendment rights have been violated.

If the adjournment is denied, we would respectfully request that, if necessary, the respondent be allowed to present additional witnesses at a future date to be determined by the Court.

Thank you.

Sincerely,

James Ostrowski