

# Lawyer ordered to turn over notes, emails to opposing counsel

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A federal judge ordered the Prohibition Junction Sports Bar & Grill in Oswego to give a former employee unredacted versions of certain notes and emails its attorney wrote while investigating the woman's allegation that a co-worker harassed her.

In a written opinion, U.S. Magistrate Judge Jeffrey T. Gilbert of the Northern District of Illinois held the material redacted from the notes the attorney took and the emails he sent to Prohibition Junction owner Kevin Fialko is not shielded from discovery in Natalia Hubert's lawsuit.

Hubert alleges Prohibition Junction violated Title VII of the Civil Rights Act of 1964 and the Illinois Human Rights Acts by subjecting her to discrimination based on her gender and then firing her in retaliation for complaining about the discrimination.

The sports bar counters it fired Hubert for dishonesty after concluding she lied to its attorney about a July 2018 encounter with the co-worker.

Kenneth S. McLaughlin Jr. of the Law Offices of McLaughlin & Associates P.C. in Aurora contends Hubert falsely claimed Tillman Liggins grabbed her arm and pulled her toward him when the two were alone in a room at Prohibition Junction.

A 15-minute portion of a closed-circuit video of the incident was too dark to see what was happening. But McLaughlin later had that portion lightened and it did not depict Liggins grabbing Hubert.

Hubert, however, denies she accused Liggins of such conduct in her interview with McLaughlin.

In his opinion, Gilbert noted Hubert and McLaughlin are the only remaining witnesses to the interview. Hubert's attorney, Joseph T. Cesario of Cesario & Walker in Hinsdale, was present but died in November 2020.

During discovery, Prohibition Junction gave Hubert the emails McLaughlin sent to Fialko and the notes he wrote while separately interviewing her and Liggins, Gilbert wrote.

However, he wrote, the sports bar turned over the emails and notes only after redacting what it described as McLaughlin's "mental impressions."

But McLaughlin had already shared those mental impressions with Fialko, who testified he based his decision to fire Hubert in large part on what the lawyer told him about the interview, Gilbert wrote.

He held McLaughlin's communications with Fialko entitle Hubert to see the unredacted notes and emails.

"Defendant's reliance on the advice of its counsel as the basis for terminating Plaintiff renders its counsel's interview notes and communications centrally relevant to a key issue in this case," Gilbert wrote. "Neither the attorney client privilege nor the work product doctrine insulates those materials or communications from discovery under these circumstances."

Also, he wrote, the redactions provide context for the unredacted portions of the notes and emails.

"It would be patently unfair for a party to assert that they relied upon the advice of counsel, yet deprive the opponent of the opportunity to understand why the advice was given, what other alternatives were looked at, why certain advice was rejected, and how the advice was interrelated to other business decisions," Gilbert wrote, quoting *In re Fresh & Process Potatoes Antitrust Litigation*, 2014 WL 1413676 (D. Idaho April 11, 2014).

He granted Hubert's second motion to compel discovery.

Hubert filed her suit against Prohibition Junction in June 2021 and her second motion to compel discovery in April 2022.

The case initially was assigned to U.S. District Judge Robert M. Dow Jr., who referred discovery supervision and discovery motions to Gilbert. The case was

reassigned to Chief U.S. District Judge Rebecca R. Pallmeyer in October after Dow was appointed counselor to Chief Justice John G. Roberts Jr. of the U.S. Supreme Court.

In his opinion, Gilbert wrote Prohibition Junction has disclosed McLaughlin as a potential witness in the case.

The sports bar states it wants to question McLaughlin “for the limited purpose of impeaching Plaintiff’s testimony that she never claimed that Tillman Liggins grabbed her in the darkened video,” Gilbert wrote, quoting a disclosure Prohibition Junction filed in the case.

If McLaughlin testifies, he wrote, Hubert will need the lawyer’s unredacted notes and emails to effectively examine the lawyer in a deposition or at trial.

Gilbert issued his opinion Dec. 29 in *Natalia Hubert v. Oswego Junction Enterprises LLC*, No. 21 C 3360.

Hubert is represented by attorneys who include Elizabeth N. Mazur and Christopher J. Wilmes, both of Hughes Socol Piers Resnick & Dym Ltd.

“We think the judge reached the correct decision about the privileges at issue,” Mazur said. “It was a mistake of Prohibition Junction to hire an attorney to defend the lawsuit who was essentially a fact witness in the case.”

She said Hubert still works in the restaurant industry.

McLaughlin, who continues to represent Prohibition Junction in the case, could not be reached for comment.

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