



Gina DeGenova

## Mahoning County Prosecuting Attorney

---

### MAHONING COUNTY PROSECUTOR GINA DEGENOVA TESTIMONY IN FAVOR OF HOUSE BILL 281

Before the House Civil Justice Committee  
Representative Brett Hudson Hillyer, Chair

April 2, 2024

Chairman Hillyer and members of the House Civil Justice Committee.

My name is Gina DeGenova and I am the Prosecuting Attorney for Mahoning County. I want to thank each you for allowing me to offer testimony in favor of the proposed modifications to R.C. 2307.60 under House Bill 281.

I was accused of criminal misconduct in a lawsuit filed against me and also served as co-counsel in lawsuits filed against other office holders in Mahoning County under R.C. 2307.60. I am here today to provide you with information on my personal experiences. All information provided to you here today is either a public record, or was generated during the course of litigation. Some documentation has been shared with you. The records are voluminous – if there are additional documents you would like me to share, I would be happy to do so.

I have been employed by the Mahoning County Prosecutor's Office since July, 2005 in various capacities. On December 1, 2022, I assumed the role as *acting* Prosecutor and held this interim position until January 7, 2023 when I was formally elected by the central committee members to serve the unexpired term of my predecessor Paul Gains. Approximately, two days into my interim appointment as Prosecutor, a county employee was terminated. This employee did not work for me, I did not participate in his discharge nor did I take part in discussions surrounding this decision. My only connection to this termination was as statutory counsel to the

department who discharged him.

On December 11, 2022, I was contacted by the discharged employee's lawyer via email, wherein he objected to the legality of his client's termination and demanded his reinstatement. A few days later, I authored an email to this same attorney, stating, in part, as follows:

Upon receipt of your correspondence, as Prosecutor, I conducted an investigation into the circumstances surrounding the December 2, 2022 "termination" of your client. My investigation revealed that the decision to terminate was made by the county administrator, not the Board of Commissioners, and that the county administrator's action was not politically motivated.

I notified counsel that his client's termination was void as no board action was taken and that his client should return to work on December 13, 2022 and that he would suffer no loss in pay or interruption of health benefits.

Shortly after I sent this email, I was sued and accused of numerous criminal acts under R.C. 2307.60, including: intimidation using a false or fraudulent writing (R.C. 2921.03(A)); tampering with records (R.C. 2913.42(A)(1) and (2)); tampering with evidence (R.C. 2921.12(A)(2)); telecommunications fraud (R.C. 2913.05(A)); bribery (R.C. 2921.02(A)); interfering with civil and statutory rights (R.C. 2921.45)); and dereliction of duty (R.C. 2921.44(E)).

A copy of this lawsuit has been shared. No police report was ever made regarding these allegations, no investigation into these alleged crimes was opened and no charges were ever filed against me.

Shortly after this complaint was filed, the crimes I was accused of were the subject of blogs published by the plaintiff's lawyer's law firm and published on said firm's website.

One such blog, published on December 23, 2022, referenced me as *Acting Prosecutor Gina DeGenova* in its title and further stated that I was accused of "criminal acts including bribery, intimidation, telecommunications fraud and tampering with evidence." This blog was later turned into a paid Facebook ad disseminated by the same law firm who published the blog. According to records publicly available on Facebook, this firm spent between \$500-\$599 dollars for this ad to run between the dates December 28, 2022 until January 7, 2023. It received between 50,000 to 60,000 impressions. According to Facebook, impressions means the number of times this ad appeared on a screen.

Another blog, published on December 30, 2022, also made references to me and

contained a link to the complaint filed against me wherein I was accused of criminal acts. This blog was also turned into a paid Facebook ad and again disseminated by the same firm who published the blog. According to records publicly available on Facebook, this firm spent between \$1,000 and \$1500 dollars for this ad to run between the dates of December 30, 2022 and January 10, 2023. It received between 100,000 and 125,000 impression. In addition, this particular ad was shared by at least 40 other Facebook profiles.

According to information also publicly available on Facebook, the second ad appeared to be targeted to people who had an interest in politics and social issues, who set their age to 18 and older and had a primary location within the United States. While the specific location targeted was not available, I was contacted by many people residing in my community who told me they saw this ad.

Copies of these blogs and their corresponding ads have been shared with you.

Ironically, the date the first ad stopped running was the same day that the central committee met and voted to officially appoint me as county prosecutor. The second ad stopped running three days later. To my knowledge, this firm placed no further ads about me in connection with this lawsuit after January 10, 2023.

A motion seeking my dismissal from this lawsuit was filed on March 27, 2023. On May 16, 2023, United States District Court Judge, Benita Pearson granted my motion and dismissed me from this lawsuit.

The county and our insurance carrier incurred over \$30,000 in legal fees to secure my dismissal.

I must also note that the attorneys who sued me for criminal acts are the same lawyers involved in lawsuits filed against other Mahoning County officials. In fact, in one such lawsuit, former Mahoning County Prosecutor Paul Gains and others were sued, in part, under R.C. 2307.60, by a former assistant prosecutor who was fired during Gains' tenure. I served as co-counsel on this lawsuit. During the pendency of this case, the plaintiff unsuccessfully ran against Gains for county prosecutor in 2020. During this campaign, the plaintiff referenced the allegations of criminal acts he filed against Gains under R.C. 2307.60. While there are many recorded examples of the comments made by the plaintiff against Gains, for the sake of time, I will only address one here today. During a radio appearance on 570 WKBN on October 15, 2020, the following statement was made by the plaintiff:

When asked about his campaign for prosecutor, he said:

“we also filed a civil lawsuit for the intimidation of a witness, retaliation against a

witness, intimidation of a public official, perjury, because he, he made statements under oath that are not true and defamation.”

“and so what’s really unique about the lawsuit is we actually filed criminal claims against him, and so violations of criminal law. And he immediately tried to get it dismissed, saying he hasn’t been criminally convicted of these, and so I can’t pursue a civil action”

“And we, we argued it. We won it. His attorneys . . . took it to the Ohio Supreme Court, and the Ohio Supreme Court, about a month ago, said don’t need a conviction, move forward.”

The statements made by this plaintiff during his political campaign against the same person he sued for criminal acts is a glaring example of how the current version of R.C. 2307.60 runs afoul with other Ohio statutes that afford citizens with certain rights and protections.

For example, under the Ohio Public Records Act, public offices are prohibited from disclosing the names of uncharged suspects in records released to the public. This protection remains intact until a person is actually *charged* with a crime. Under RC 2307.60, however, a person can be accused of criminal acts for which he/she was never charged and no such protections are afforded to him/her.

Moreover, statutes affording public officials with protections from civil liability are also at odds with R.C. 2307.60. For example, as prosecutor, I am immune from civil liability under the litigation privilege for statements I make as the county’s lawyer in connection with a lawsuit. This protection is similar to the legislative privilege afforded to each of you for statements you make during a legislative session like this one.

But under 2307.60, each one of us can still be accused of crimes for making these otherwise protected statements. No criminal conviction is required, no investigation by law enforcement needs to be conducted and no finding of probable cause by a neutral and detached judge, magistrate or grand jury, need ever be made.

And sadly, once these allegations are made, it seems like we are required to prove ourselves innocent in the court of public opinion and have zero recourse against the people who accused us of crimes once we successfully secure our dismissal. Why? Because allegations or statements made in legal pleadings or proceedings are protected speech. And they remain protected speech regardless of how many times they are repeated or the platform that is used to publish them.

While I successfully defended myself from this lawsuit – the damage was already

done. With a stroke of a pen and the assistance of R.C. 2307.60, I could be accused of committing egregious crimes such as bribery, tampering with evidence and dereliction of duty. Since these allegations stem from a lawsuit and are protected speech giving me no legal recourse against my accuser.

As the old saying goes - you can't unring a bell. Sadly, this bell continues to ring against me today. Each blog referenced earlier is still available on the law firm's website and appear in searches made under my name. In fact, I am still questioned about this lawsuit today.

Had R.C. 2307.60 required that I be convicted of these crimes to file suit, it is my opinion that I would not have been sued. My reputation would not have been tarnished and tens of thousands of dollars in legal fees would not have been spent.

I am aware of no other statute affording someone so much leeway. The police certainly don't have it – under criminal statutes, if someone is falsely accused of a crime by police and no finding of probable cause made by a neutral and detached judge, magistrate or grand jury, the aggrieved party can sue the charging agency for malicious prosecution and recover damages. But RC 2307.60 offers aggrieved persons no recourse. We are literally sitting ducks waiting for someone, who, at any time, can file a lawsuit against us accusing us of egregious crimes.

Requiring a criminal conviction as a condition precedent to filing suit under R.C. 2307.60 closes an unintended loophole that allows private citizens to file civil actions accusing others of crimes without probable cause or a criminal conviction.

Thank you for the opportunity to speak to you today.