IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED
OCT 22 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

In the Matter of

HEIDI ALMASE, Former Municipal Court Judge, City of Las Vegas, County of Clark, State of Nevada,

Respondent.

CASE NO. 77227

CERTIFIED COPY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE

Pursuant to Commission Procedural Rule 28(2), I hereby certify that the document attached hereto is a true and correct copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE filed with the Nevada Commission on Judicial Discipline on October 22, 2018.

DATED this 22nd day of October, 2018.

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
P.O. BOX 48
CARSON CITY, NV 89702
(775) 687-4017

By: _____
PAUL C. DEYHLE
General Counsel and Executive Director
Nevada Bar No. 6954

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NEVADA COMMISSION ON JUDICIAL DISCIPLINE
, Clerk

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE

STATE OF NEVADA

In the Matter of HEIDI ALMASE, former Municipal Court Judge, City of Las Vegas, County of Clark, State of Nevada, Respondent.	CASE NO. 2017-099-P

FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE

Pursuant to prior written notice, the above-entitled matter was set for a formal, two-day public hearing in Las Vegas, Nevada, pursuant to NRS 1.467 and Commission Procedural Rule 18, commencing on October 2, 2018, before the Nevada Commission on Judicial Discipline (hereinafter, the "Commission"), regarding the allegations against former Municipal Court Judge Heidi Almase (hereinafter, "Respondent") for violations of the Revised Nevada Code of Judicial Conduct (hereinafter, the "Code"). The hearing concluded in two hours and ten minutes.

Kathleen Paustian, Esq. served as the Prosecuting Officer to the Commission (hereinafter, the "Prosecuting Officer") and was present. Respondent represented herself and was present. During the hearing, the Commission considered all evidence and testimony presented.

This document contains the findings of fact and conclusions of law contemplated by Commission Procedural Rule 28. The findings set forth below establish that Respondent violated multiple sections of the Code.

A. FINDINGS OF FACT

The Commission finds that the legal evidence presented by the Prosecuting Officer at the hearing clearly and convincingly established each of the following facts set forth in Paragraphs 1 through 2 below:

1. Respondent was, at all times applicable to the allegations contained in the Formal Statement of Charges, a Municipal Court Judge for the Las Vegas Municipal Court located in Clark County, Nevada, and whose conduct was subject to the Code.

2. The factual allegations in Count One of the Formal Statement of Charges regarding Respondent's actions with respect to her re-election campaign's Facebook posts, have been proven by clear and convincing evidence.

The credible evidence established that in 2017, Respondent ran for a second term as a Municipal Court Judge. Respondent was initially represented in her bid for re-election by David Thomas, Esq. After Mr. Thomas withdrew from representing Respondent, she entered into an Independent Contractor Agreement and Addendum (collectively, the "Contract") with Jennifer C. Barrier, dated April 10, 2017, for campaign management.[1] Respondent testified that she did not know Ms. Barrier well prior to entering into a contractual relationship with her,[2] and did not inquire about or check references from other judicial candidates that had worked with Ms. Barrier in the past while she was engaged by Mr. Thomas as an independent contractor. (*See* Transcript, p.20, ln.20 to p.21, ln.17). Respondent further testified that she gave Ms. Barrier and her graphic artist, Kari Banks, access to Respondent's campaign Facebook page shortly after signing the Contract with Ms. Barrier. (*Id.* at p.21, ln.18 to p.22, ln.8).

The credible evidence further established that Ms. Barrier informed Respondent that she had a "surprise" for her. Respondent testified that when she went to Ms. Barrier's office on June 6, 2017, between 10 a.m. and noon, Ms. Barrier again stated that "she had used her family contacts to do something very special for the campaign. It was going to set us apart, ..." (*Id.* at p.22, ln.17 to p.23, ln.3). The evidence demonstrates that not only did Ms. Barrier fail to explain any of the specific details of the "surprise" to Respondent, Respondent likewise never questioned or further inquired about the "surprise" prior to leaving Ms. Barrier's office that day. (*Id.* at p.22, ln.23 to p.23, ln.3).

Later that same day, Ms. Barrier posted a photoshopped image of the actor Dwayne Johnson, known as "the Rock", standing side-by-side with Respondent in her judicial robe on Respondent's official campaign Facebook page. The image was captioned: "It just makes sense: Re-Elect Judge Heidi Almase" and identified Mr. Johnson, including his signature (hereinafter referred to as the "Rock

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[1] Respondent testified that the Contract with Ms. Barrier did not require Respondent's approval of social media material prior to being posted. (Hearing Transcript, dated October 2, 2018 ("Transcript"), p.19, ln.23 to p.20, ln.1; *see also* Hearing Exhibit 2, Contract, bates stamped 015-019).

[2] Respondent only knew Ms. Barrier for 4 months prior to entering into the Contract. Respondent met Ms. Barrier in December of 2016 and entered into the Contract with her in April of 2017. (Transcript, p.18, lns.19-22; p.20, lns.6-19).

Post"). (*See* Hearing Exhibit 1, bates stamped 007; Transcript, p.23, ln.7 to p.24, ln.21). Respondent testified that she first saw the Rock Post in the late afternoon or early evening of June 6, 2017, and subsequently called Ms. Barrier to ask her about it. Ms. Barrier explained to Respondent her relationship with Mr. Johnson and her intentions to use his image in the campaign. (Transcript, p.24, ln.22 to p.25, ln.23).

Respondent further testified that during her call with Ms. Barrier, Respondent did not ask if Ms. Barrier had obtained the written release from Mr. Johnson to use his image, likeness and signature, but rather relied on Ms. Barrier's representation that she had obtained Mr. Johnson's "verbal permission." (*Id.* at p.28, ln.17 to p.29, ln.1; p.30, lns.5-9). Later that evening on June 6, 2017, Respondent posted the following comment on her campaign Facebook page related to the Rock Post: "I'm 'almost' taller than him. Almost" (the "Rock Comment") (Hearing Exhibit 3, Las Vegas Review Journal Article dated June 7, 2017, bates stamped 021; Transcript, p.29, ln.2 to p.30, ln.4).

On June 7, 2017, the Las Vegas Review Journal ("Review Journal") ran an article about Respondent's Rock Post and Rock Comment, in which the reporter asked Ms. Barrier if she had authority to post the image of Mr. Johnson. The article stated that Ms. Barrier replied that she was "...waiting on a written authorization to use his photo, ..." (Hearing Exhibit 3, bates stamped 022). Ms. Barrier removed the Rock Post from Respondent's campaign Facebook page in the early morning of June 7, 2017, after Ms. Barrier spoke to the Review Journal reporter. (Transcript, p.35, ln.8 to p.37, ln.21). Subsequently, Respondent testified that she terminated Ms. Barrier via email. (*Id. at* p.36, ln.25 to p.38, ln.15; *see also* Hearing Exhibit 1, June 8, 2017 email from Respondent to Ms. Barrier, bates stamped 011). Respondent later apologized for the Rock Post in a Press Release dated June 9, 2017. (Hearing Exhibit 1, bates stamped 012-013; *see also* Transcript, p.50, ln.20 to p.51, ln.1). That same day, she also self-reported these actions to the Commission. (Hearing Exhibit 1, Self-Reporting Letter). Respondent lost the election to her opponent.

The Commission finds that the Rock Post was a false and misleading statement made knowingly, or with reckless disregard for the truth, by Respondent's campaign representatives in violation of Code Rule 4.1(A)(11). The evidence clearly demonstrates that Respondent never met Mr. Johnson. (Transcript, p.30, lns.10-15). Accordingly, Respondent knew immediately, upon seeing the

Rock Post, that it was not only a photoshopped image of her with a famous actor, but also entirely false on its face. Respondent even testified that she was concerned that the Rock Post appeared to be an endorsement of her re-election campaign. (Transcript, p.51, lns.7-12; *see also* Hearing Exhibit 1, Self-Reporting Letter, bates stamped 001).

Furthermore, the Rock Post occurred very close to the actual election. In fact, early voting had already begun. (Transcript, p.52, lns.17-24). Thus, the Commission finds that the Rock Post improperly misled the public into believing that Mr. Johnson had indeed endorsed Respondent's campaign.[3] Despite the misleading nature and falsity of the Rock Post, as well as Respondent's own expressed concerns, Respondent subsequently posted the Rock Comment[4] to her campaign Facebook page. The Commission finds that the Rock Comment was an improper confirmation and ratification of the earlier false Rock Post, thereby further misleading the public.

The Commission also finds that Respondent did not take reasonable measures to ensure that her campaign representatives complied with the Code in violation of Code Rule 4.1(B). The evidence clearly demonstrates that (i) Respondent's Contract with Ms. Barrier did not contain any restrictions on the posting of social media materials, such as obtaining prior approval of Respondent,[5] (ii) Respondent did not discuss with her campaign representatives the constraints and prohibitions of the Code as it relates to judicial campaigns,[6] and (iii) Respondent failed to properly supervise her campaign representatives.[7]

Respondent testified that she did not know Ms. Barrier well. Despite this, however, Respondent provided Ms. Barrier and Ms. Banks, in essence, carte blanche and unsupervised access to her campaign Facebook page. Ms. Barrier informed Respondent that she had a "surprise" which would set the campaign apart, thus putting Respondent on notice that Ms. Barrier would be imminently taking a certain undisclosed action. Nevertheless, Respondent neither inquired about the "surprise" nor asked to

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[3] *See* Hearing Exhibit 3, bates stamped 021 (identifying public comments to the Rock Post).
[4] *See* p.3, lns.10-11, *supra.*
[5] Although Code Rule 4.2(A)(3) was not charged in this case, it is instructive in that it requires judicial candidates to "review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination, ..." Code Rule 4.2(A)(3).
[6] *See* Transcript, p.58, ln.4 to p.60, ln.1.
[7] Respondent testified that she failed to properly supervise Ms. Barrier as her campaign manager. (Transcript, p.51, lns.13-22). Respondent further testified that "... I wish in the heat of the campaign that I had asked for all of the things that [the Prosecuting Officer] has pointed out. I wish that I could go back, but I can't." (Transcript, p.54, lns.15-18).

review and approve it prior to implementation. Respondent simply trusted Ms. Barrier that she had "verbal permission" from Mr. Johnson. (Transcript, p.30, lns.5-9).

The Commission finds that it was inappropriate under the circumstances for Respondent to not further question Ms. Barrier's representation that she had "verbal permission" from Mr. Johnson, particularly since the very explanation given to Respondent by Ms. Barrier, which formed the basis of her reliance, was significantly vague and lacked any degree of specificity.[8] Reliance upon such "verbal permission" of an internationally renowned actor from a person Respondent hardly knew did not equate to taking reasonable measures to ensure that the Rock Post complied with the Code.

The Commission also finds that Respondent did take remedial steps once she believed that Ms. Barrier did not have Mr. Johnson's permission to post the Rock Post by, among other things, terminating Ms. Barrier, subsequently posting an apology on Facebook, and self-reporting to the Commission. Nevertheless, the Commission found it troubling under the circumstances that Respondent did not direct Ms. Barrier to immediately take down the Rock Post upon first becoming aware of it, and then, shortly thereafter, posted her Rock Comment.

On May 2, 2018, Respondent filed her Verified Response and Answer (hereinafter, "Answer") to the Formal Statement of Charges, in which she admitted that she violated: Canon 1, Rule 1.2, failing to promote public confidence in the independence, integrity and impartiality of the judiciary, avoiding impropriety and the appearance of impropriety;[9] Canon 4, Rule 4.1(B), requiring a judge or judicial candidate to take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A) of Rule 4.1;[10] and Canon 4, Rule 4.4(A), subjecting campaign representatives to the provisions of the Code and mandating that the

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[8] *See* Transcript, p.24, ln.22 to p.25, ln.23. Ms. Barrier's explanation to Respondent appeared to lack a reasonable degree of certainty that Mr. Johnson was sufficiently informed (if at all) of Ms. Barrier's intention to use his image, likeness and signature to endorse a candidate with whom he never met or knew. While Mr. Johnson's alleged "anything for you" response was apparently sufficient for Ms. Barrier to move forward, that should not have been adequate for Respondent. The Commission notes that an internationally renowned actor would likely require written authorization to use his image and likeness. Even in Respondent's own Self-Reporting Letter, Respondent stated, "[i]t did not occur to me to ask if she had cleared the image or obtained additional written releases." (Hearing Exhibit 1, bates stamped 002; *see also* Transcript, p.28, lns.17-21). Respondent, as a judge and lawyer, should have taken more reasonable measures to ensure that the Code was not violated; particularly given that she was previously involved in an election campaign when she was first elected, served on the bench for 6 years, and had previously served as an alternate judicial Commissioner for the Commission.

[9] Respondent also testified that the Rock Post was improper. (Transcript, p.51, ln.23 to p.52, ln.7).

[10] Respondent further testified that she failed to properly supervise her campaign representatives by not reviewing and approving materials that were to be posted on her campaign Facebook page. (Transcript, p.51, lns.13-22).

candidate be responsible for ensuring that her campaign representatives comply with applicable provisions of the Code.[11] In her Answer, Respondent denied violating Canon 1, Rule 1.1, failing to comply with the law, including the Code,[12] and Canon 4, Rule 4.1(A)(11), knowingly or with reckless disregard for the truth, make any false or misleading statement.[13]

B. CONCLUSIONS OF LAW

1. As to Count One of the Formal Statement of Charges, the Commission finds that the Prosecuting Officer has proven by clear and convincing evidence that Respondent's actions constitute violations of Canon 1, Rules 1.1 and 1.2; and Canon 4, Rules 4.1(B) and Rule 4.4(A).

2. The Commission has both personal jurisdiction over Respondent and subject matter jurisdiction over the violations of the Code at issue in this case.

C. IMPOSITION OF DISCIPLINE

In consideration of the totality of Respondent's actions and violations of the Code, the Commission concludes that the appropriate discipline under Commission Procedural Rule 28 shall be as follows:

By unanimous vote of the Commission, after due deliberation and consideration of the evidence presented, Respondent's lack of prior discipline by the Commission, and the remedial steps taken by the Respondent; but nevertheless, in light of the seriousness of Respondent's campaign making a false and misleading campaign statement, Respondent commenting on the same and only removing the statement after reports in the media surfaced, it is decided that pursuant to subsections 5(a) and (b) of Article 6, Section 21 of the Constitution of the State of Nevada, NRS 1.4653(1) and (2), NRS 1.4677(1)(a), and Commission Procedural Rule 28, Respondent shall hereby be publicly reprimanded for having committed the acts as fully set forth above.

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[11] *See* Transcript, p.7, lns.6-8.

[12] Code Rule 1.1 is violated if a judge fails to "comply with the law, including the Code of Judicial Conduct" (emphasis added). Respondent admitted in her Answer and in her testimony before the Commission that she violated multiple Code Rules. Accordingly, by implication, Code Rule 1.1 is also violated.

[13] The Commission finds that Rule 4.1(A)(11) applies only to Respondent's actions, not to Respondent's campaign representatives. However, Code Rules 4.1(B) and 4.4(A) mandate that Respondent take reasonable measures to ensure that other persons do not violate the Code on her behalf, and that Respondent is responsible for her campaign representative's Code violations. Accordingly, by virtue of the violation of Code Rule 4.1(A)(11) by Respondent's campaign representatives, which the Commission thus finds, the Respondent has therefor violated Rules 4.1(B) and 4.4(A). In her Answer, Respondent admitted to violating Code Rules 4.1(B) and 4.4(A), in addition to Code Rule 1.2.

The primary purpose of the Revised Nevada Code of Judicial Conduct is the protection of the public, not the punishment of judges. The Commission protects the public by instilling confidence in the integrity of the judicial system in Nevada, as public trust is essential to the administration of justice. In carrying out this duty, the law provides the Commission a broad range of disciplinary measures to be imposed which include, but are not limited to, removal from office, suspensions, fines, educational requirements, public reprimands, etc. The imposition of discipline further serves the function of discouraging future misconduct by the disciplined judge as well as the judiciary as a whole.

The Commission takes this opportunity to remind judicial candidates that campaign-related social media platforms, such as Facebook, maintained by a campaign committee or others, do not insulate them from the strictures of the Code. A judicial candidate is responsible for reviewing and approving all campaign statements and materials, irrespective of who produced them, prior to their dissemination, and for taking reasonable measures to ensure others do not conduct activities on their behalf that they themselves are prohibited from doing under the Code.

A judicial candidate's knowledge of a false or misleading statement, the reasonableness of preventative measures taken by such candidate to ensure compliance with the Code by their campaign committees and staff, as well as the timeliness of taking corrective action on false and misleading campaign information disseminated to the public, are important factors in assessing a judicial candidate's commitment and adherence to the Code. Accordingly, based on the foregoing, the discipline imposed against Respondent is justified based upon the facts of the case, the seriousness of the offenses involved, and consideration of mitigating circumstances.

D. ORDER

IT IS HEREBY ORDERED by unanimous vote of Chair Gary Vause, Vice Chair Stefanie Humphrey, Commissioners Karl Armstrong, Esq., Bruce Hahn, Esq., Joseph Sanford, the Honorable Mason Simons, and the Honorable Thomas Armstrong that Respondent be, and hereby is, publicly reprimanded for violations of Judicial Canon 1, Rule 1.1, requiring Respondent to comply with the law, including the Code, and Rule 1.2, failing to promote public confidence in the independence, integrity and impartiality of the judiciary, avoiding impropriety and the appearance of impropriety; and Canon 4, Rule 4.1(B), requiring a judge or judicial candidate to take reasonable measures to ensure that other

persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A) of Rule 4.1, and Rule 4.4(A), subjecting campaign representatives to the provisions of the Code and mandating that the candidate be responsible for ensuring that her campaign representatives comply with applicable provisions of the Code.

IT IS FURTHER ORDERED by unanimous vote that the Chairman is authorized to sign this document on behalf of all voting Commissioners.

DATED this 22nd day of October, 2018.

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
P.O. Box 48
Carson City, NV 89702

By: _____
GARY VAUSE
COMMISSION CHAIRMAN

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Commission on Judicial Discipline and that on the 22nd day of October, 2018, I served a copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND IMPOSITION OF DISCIPLINE** by email and U.S Mail, postage paid, addressed to the following:

Heidi Almase, Esq.
674 Rolling Green Drive
Las Vegas, NV 89169
Battlborn@hotmail.com

Kathleen Paustian, Esq.
Law Offices of Kathleen M. Paustian
1912 Madagascar Lane
Las Vegas,NV 89117
kathleenpaustian@cox.net

Tarah L. Hansen, Commission Clerk