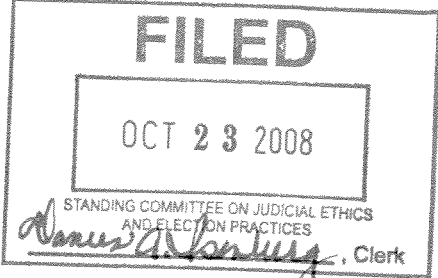


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STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES

IN RE UNFAIR ELECTION PRACTICE)
FILED BY JUDICIAL CANDIDATE DOUG)
SMITH AGAINST JUDICIAL CANDIDATE)
JOSH KUNIS)



PUBLISHED DECISION: 08-4

Clark County District Court, Department 8, candidate Doug Smith brought a complaint against opponent Josh Kunis claiming Mr. Kunis has made the same false statement about Smith's judicial background twice during the campaign. Candidate Kunis lodged a counter-complaint that Doug Smith violated a Committee Rule and recent decision.

CHRONOLOGY

On October 6, 2008, Candidate Smith submitted a Judicial Election Complaint ("Complaint") against Mr. Kunis alleging his opponent had twice wrongfully stated at campaign events that Doug Smith "...has had an ethics complaint against him that has haunted him for the past three years." Mr. Smith alleged Mr. Kunis first said this at a Judicial Forum sponsored by Mediators of Southern Nevada, Inc., on October 4, 2008 at the Saltman Center for Conflict Resolution, UNLV Boyd School of Law. Mr. Kunis allegedly repeated it during a 10:30 a.m. taping of the TV show "Face to Face with Jon Ralston" on October 6, 2008. Mr. Kunis admitted making both statements. During the same taping, Doug Smith stated he had filed a disciplinary complaint against Kunis with this Committee.

Candidate Smith did not cite to the Judicial Canon which he believed Mr. Kunis violated, he asked the Committee to stop "this defamatory type of campaigning". While it is true that the Judicial Discipline Commission brought a Statement of Charges against Las Vegas Justice of the Peace Doug Smith on November 30, 1998, the Commission filed a Decision on May 4, 1999

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dismissing the charges. The Charge questioned Judge Smith’s decision to jail a woman for contempt in a landlord-tenant dispute. Attorney William B. Terry represented Judge Smith before the Commission in late 1998. In dismissing the charges five (5) months later, the Commission also stated that Judge Smith had agreed to take training on the proper use or contempt powers at the National Judicial College in Reno.

Mr. Smith introduced evidence before the Committee of Attorney Terry meeting with then District Attorney Stewart Bell before Terry represented Justice of the Peace Smith in 1998. Terry and Bell reached an agreement that Terry could still appear before Judge Smith on non-contested criminal matters, but that contested matters involving Mr. Terry would be transferred to another Justice of the Peace. It was also agreed that after Mr. Terry’s representation of Justice Smith ended, these procedures would be followed for six (6) months. Mr. Terry’s recollection was corroborated by now District Court Judge Stewart Bell.

In 2006, William Terry represented shooting suspect Ryan Royal before Justice of the Peace Smith, who ultimately dismissed the case after refusing to admit into evidence a bullet for which the prosecution did not establish the necessary chain of custody.

As to the counter-complaint brought on October 10, 2008, Candidate Kunis alleges Doug Smith violated Committee Rule 4.3(b)(iii) and the *Duffy v. Maskall* Opinion 08-02 by publicly disclosing he had filed a charge against Kunis with this Committee.

DECISION

It is Candidate Smith’s contention his opponent was intentionally misleading the public by referencing the decade old disciplinary complaint, which was dismissed, and implying a conflict of interest because eight (8) years later the same lawyer who had represented Judge Smith before the Disciplinary Commission appeared before him in a criminal case which Smith dismissed. The Committee finds that Candidate Kunis’ statement was inaccurate and misleading. While disciplinary charges were filed against Smith in 1998, they were dismissed. In addition, Attorney Terry and the District Attorney took measures at the time in 1998 to remove Mr. Terry and his clients from the jurisdiction of Judge Smith in contested criminal matters. The fact that Mr. Terry appeared before

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Justice of the Peace Smith eight (8) years later in a controversial case which the Judge dismissed does not substantiate the implication of conflict embodied in Mr. Kunis' remark. However, as stated above, Judge Smith did not allege violation of a specific Judicial Canon and this Committee finds that he failed to meet the burden of proving a violation of any Code of Judicial Conduct.

As to Mr. Kunis' counter-complaint, he alleges Mr. Smith violated Rule 4.3(b)(iii) and the Committee's Opinion in *Duffy v. Maskall* which found Ms. Maskall violated the confidentially provision of Committee Rule 4.5:

All meetings of panels concerning unfair election practices are confidential.
Any decision shall be signed by the chair or vice-chair, and all decisions must be made public.

Rule 4.3(b)(iii) states:

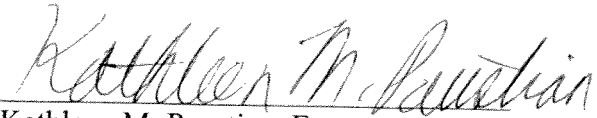
During this entire procedure, neither the candidate nor any member of the committee or panel shall make any public reference to the fact that the matter is pending before the committee.

Mr. Kunis contends Mr. Smith violated this provision by announcing on the Ralston program that he had filed an election complaint against Kunis with this Committee. Doug Smith faxed his Complaint against Kunis to the Committee shortly after 7:00 a.m. on October 6, 2008. Approximately three and a half hours later, he disclosed the existence of his complaint during the taping of the program. The Committee concludes Candidate Smith violated the confidentiality provision of Rule 4.3(b)(iii) by making this disclosure.

This Decision shall be published in accordance with Committee Rules 4.4 and 4.5.

October 22, 2008

NEVADA STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES.


Kathleen M. Paustian, Esq.
Vice-Chair