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STATE OF NEVADA  
STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

IN RE UNFAIR ELECTION PRACTICE  
COMPLAINT PURSUANT TO NCJC  
CANON 4 AND NCJC RULE 4.1(A)(11):

CATHERINE RAMSEY,  
Complainant

vs.

MARSHA KIMBLE-SIMMS  
Respondent.

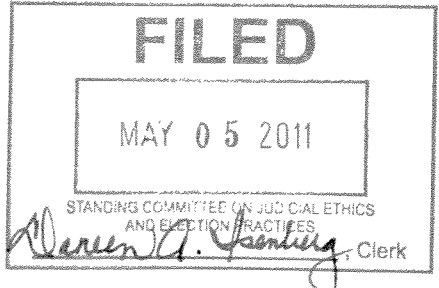
MARSHA KIMBLE-SIMMS,  
Complainant,

vs.

CATHERINE RAMSEY,  
Respondent.

PUBLISHED DECISION 11-1  
[Consolidated]

Case No. 11-1,



Case No. 11-2 and 11-3

**OPINION**

This matter came before a Panel of the Standing Committee on Judicial Ethics and Election Practices for hearing on April 28, 2011. The Panel selected in accordance with Rule 4.1 of the Rules of the Standing Committee on Judicial Ethics and Election Practices was comprised of the Honorable Ann Zimmerman, Donna L. Coleman, Robert D. Martin, Esq., Yvonne Murphy and Dan R. Reaser, Esq. The entire Panel was present and participated in the hearing.

Catherine Ramsey ("Ramsey") was present and appeared in *propria persona*. Marsha Kimble-Simms ("Kimble-Simms") also was present and appeared in *propria persona*. The Panel reviewed the pleadings and papers submitted by the parties and the related records of the Standing Committee in Case Numbers 11-01, 11-02 and 11-03, which were designated as the administrative record. At the hearing the Panel received

1 testimony and argument of Ms. Ramsey and Ms. Kimble-Simms. Ms. Ramsey  
2 presented the testimony of three other witnesses, namely John P. Wanderer, Esq., the  
3 Honorable Stephen J. Dahl of the North Las Vegas Justice Court and Laurie Diefenbach,  
4 Esq. Ms. Ramsey also proffered Exhibit Numbered 1 which was accepted into the  
5 record of the proceedings before the Panel.

6 SUMMARY OF CLAIMS AND EVIDENCE

7 1. Ramsey and Kimble-Simms are each duly declared candidates for the  
8 office of Municipal Court Judge for Department 1 of the North Las Vegas Municipal  
9 Court. Neither of the candidates are incumbent judicial officers.

10 2. In Case No. 11-01, Ramsey alleges that Kimble-Simms violated Rule  
11 4.1(A)(11) of the Nevada Code of Judicial Conduct (the "NCJC") in that Kimble-Simms  
12 knowingly, or with reckless disregard of the truth published on some of her campaign  
13 signage and printed materials the following statement:

14 THE RIGHT CHOICE FOR NLV MUNICIPAL COURT JUDGE  
15 JUDGE PRO-TEM  
16 MARSHA  
17 KIMBLE-SIMMS

18 Ramsey asserts the use of the reference "Judge Pro-Tem" falsely misleads the public to  
19 believe that Kimble-Simms is an incumbent pro-tem judicial officer.

20 3. Kimble-Simms defends against Ramsey's claim in Case No. 11-01 that the  
21 statement "Judge Pro Tem" is a factual statement of experience and thus truthful and  
22 not misleading.

23 4. In Case No. 11-02, Kimble-Simms alleges that Ramsey violated NCJC Rule  
24 4.1(A)(11) by claiming in public statements that Ramsey had twenty-five years of legal  
25 experience, which could not be truthful given Ramsey has only been a member of the  
26 State Bar of Nevada since 2002.

27 5. Ramsey defends against Kimble-Simms' claim in Case No. 11-02 that her  
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1 statement that she has twenty-five years "legal experience" is accurate and that Ramsey  
2 is neither accused of nor has she stated she has "practiced law" or been an attorney for  
3 twenty-five years.

4 6. In Case No. 11-03, Kimble-Simms further alleges that Ramsey violated  
5 NCJC Rule 4.1(A)(11) by claiming in public statements that Ramsey is the "ONLY  
6 candidate who has worked in Department No. 1."

7 7. Ramsey defends against Kimble-Simms' claim in Case No. 11-03 that  
8 Kimble-Simms has misrepresented her statements.

9 8. The relevant facts as determined by the evidence produced by the parties  
10 are not in dispute.

11 9. Kimble-Simms concedes that she has campaign signs and that her printed  
12 materials unequivocally state "JUDGE PRO-TEM MARSHA KIMBLE-SIMMS."

13 10. The testimony of Judge Dahl and documentary evidence establish that  
14 Kimble-Simms served as a pro tem judge on two occasions, February 8, 2007, and  
15 March 29, 2007. The evidence further shows that Kimble-Simms has not been on the  
16 Justice of the Peace Pro Tempore Panels approved by the Clark County Board of  
17 Commissioners since December 31, 2008. Kimble-Simms does not contest these facts.

18 11. Kimble-Simms' printed campaign materials state she is "a former  
19 prosecutor" and that she has "[j]udicial experience [as] Judge Pro Tem North Las Vegas  
20 Justice Court."

21 12. Ramsey has been a member of the State Bar of Nevada since 2002. Prior to  
22 being admitted to the practice of law, Ramsey was employed as a legal secretary, legal  
23 assistant and paralegal beginning in 1985. Ramsey earned an Associate of Applied  
24 Science Degree as a Legal Assistant in 1988 from Clark County Community College.  
25 Mr. Wanderer testified concerning the type of experience Ramsey would have had as a  
26 legal secretary and assistant since 1987. Ms. Diefenbach, like Ramsey and Kimble-  
27 Simms, was a candidate for Municipal Court Judge. She was unsuccessful in the  
28 primary election. Ms. Diefenbach testified that in campaign speeches Ramsey made at

1 which Ms. Diefenbach was present, Ramsey was careful to describe her prior “legal  
2 experience” and did not represent that she had twenty-five years experience as a  
3 practicing attorney. Kimble-Simms did not present any evidence to contradict these  
4 facts and did not produce any evidence that Ramsey had stated anything more than  
5 that she had twenty-five years of “legal experience.”

6 13. Ramsey’s printed campaign materials state “Catherine is the only one  
7 with firsthand knowledge and experience in the very court in which she is a candidate.”  
8 Kimble-Simms did not produce any evidence which establishes that Ramsey made a  
9 statement that she was the “only candidate who has worked in Department No. 1.”

#### 10 DISCUSSION AND ANALYSIS

11 14. Canon 4 of the NCJC states, “[a] judge or candidate for judicial office shall  
12 not engage in political or campaign activity that is inconsistent with the independence,  
13 integrity, or impartiality of the judiciary. See Nev. Code Jud. Conduct, Canon 4. Rule  
14 4.1 provides in relevant part that “a judge or judicial candidate shall not . . . knowingly,  
15 or with reckless disregard for the truth, make any false or misleading statement.” See  
16 Nev. Code Jud. Conduct, Rule 4.1(A)(11).

17 15. The commentary to Rule 4.1(A)(11) explains that:

18 Judicial candidates must be scrupulously fair and accurate in all  
19 statements made by them and by their campaign committees.  
20 Paragraph (A)(11) obligates candidates and their committees to  
21 refrain from making statements that are false or misleading, or  
22 that omit facts necessary *to make the communication considered  
as a whole not materially misleading.*

23 See Comment 7 to Rule 4.1(11)(emphasis added).

24 16. An unfair election practice must be established with evidence proving by  
25 preponderance a violation of the NCJC. The term “preponderance of the evidence”  
26 means such evidence that leads the fact finder to conclude that the existence of the  
27 contested fact is more probable than its nonexistence. See Brown v. State, 107 Nev. 164,  
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1 166, 807 P.2d 1397 (1991).

2 17. In the Standing Committee's Published Opinion 00-01, we decided that  
3 the non-incumbent candidate for judicial office had engaged in an unfair election  
4 practice. In that case, the errant candidate erected scores of campaign signs that simply  
5 stated "James A. Essenpreis Justice of the Peace." Candidate Essenpreis was alerted that this  
6 misrepresented his position as an incumbent and he proceeded to affix a sticker on the signs as a  
7 corrective measure. See In Re Complaint of Trujillo v. Essenpreis, Pub. Op. 00-01 (Nev.  
8 Standing Comm. Jud. Ethics & Elect. Prac. at 2 (Aug. 15, 2000).

9 18. Under the NCJC, our obligation is to determine if a preponderance of the  
10 evidence establishes the judicial candidate made a materially misleading statement  
11 considering the campaign communication as a whole and if so whether the misleading  
12 statement was made by the judicial candidate with knowledge of its falsity or with  
13 reckless disregard of the truth.

14 19. Effective on April 28, 2011, the statement "JUDGE PRO-TEM MARSHA  
15 KIMBLE-SIMMS" on Kimble-Simms' campaign signs and printed materials was false or  
16 omitted a fact necessary to make the communication not materially misleading as a  
17 whole. A preponderance of the evidence shows that Kimble-Simms knew or reasonably  
18 should have known that as of and after January 1, 2009, she was no longer on the Justice  
19 of the Peace Pro Tempore Panels approved by the Clark County Board of  
20 Commissioners. As we explained in Published Opinion 06-02, both knowledge of the  
21 false statement, the reasonableness of a candidate's actions to ensure compliance with  
22 campaign materials under NCJC Rule 4.2(3) and the timeliness of correcting errors are  
23 factors in assessing the candidate's commitment to the objectives of Canon 4. See In Re  
24 Complaint of Robb-Peck v. Flanagan, Pub. Op. 06-02 (Nev. Standing Comm. Jud. Ethics &  
25 Elect. Prac. at 2 (Nov. 2, 2006).

26 20. Some of Kimble-Simms' printed campaign materials, as contrast with  
27 campaign signs, state she is "a former prosecutor" and "Judicial experience Judge Pro  
28 Tem North Las Vegas Justice Court." The former statement demonstrates that Kimble-

1 Simms understood the importance of indicating to the public that her prosecutorial  
2 experience was in a "former" position. Kimble-Simms made no effort to similarly  
3 qualify the pro tem judicial experience.

4 21. Kimble-Simms presented no evidence of any effort to correct the false or  
5 misleading statements on campaign signs and printed materials since Ramsey's  
6 complaint was made on March 29, 2011.

7 22. The Standing Committee unanimously concludes that a preponderance of  
8 the evidence establishes that Kimble-Simms engaged in an unfair campaign practice in  
9 violation of NCJC Canon 4 and Rule 4.1(A)(11) and that this incident could have been  
10 avoided had Kimble-Simms exercised greater care consistent with NCJC Rule 4.2(3) to  
11 ensure the content of campaign statements.

12 23. The Standing Committee unanimously concludes that Kimble-Simms has  
13 not proven by a preponderance of the evidence that Ramsey violated NCJC Canon 4 or  
14 Rule 4.1(A)(11) by stating she has twenty-five years of "legal experience." Likewise, the  
15 Standing Committee unanimously concludes that Kimble-Simms has not proven by a  
16 preponderance of the evidence that Ramsey ever stated orally or in writing that she is  
17 the "only candidate who has worked in Department No. 1," in alleged violation of  
18 NCJC Canon 4 or Rule 4.1(A)(11).

19 24. The Standing Committee unanimously concludes that considering the  
20 campaign communication as a whole set forth in Ramsey's printed materials, there is  
21 not a materially misleading statement that would reasonably cause the public to  
22 conclude that Ramsey suggested or represented she had practiced law for twenty-five  
23 years. Instead, the record shows that Ramsey's statement was that she had twenty-five  
24 years of "legal experience," a factual statement upon which Kimble-Simms presented  
25 no contradictory proof. Moreover, the evidence presented was that Ramsey's statement  
26 that "Catherine is the only one with firsthand knowledge and experience in the very  
27 court in which she is a candidate" is neither inaccurate nor misleading. Kimble-Simms  
28 has not shown otherwise.

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DECISION

Therefore, the Standing Committee concludes:

- (i) That Canon 4 and Rule 4.1(A)(11) have been violated with respect to Kimble-Simms' statement without qualification on campaign signs and printed materials that she is a Pro Tem Judge," and to that extent Kimble-Simms engaged in an unfair election practice; and,
- (ii) That Canon 4 and Rule 4.1(A)(11) have not been violated with respect to Ramsey's statement that she has "twenty-five years of legal experience," and to that extent Kimble-Simms has failed to establish Ramsey engaged in an unfair election practice; and,
- (iii) That Canon 4 and Rule 4.1(A)(11) have not been violated with respect to Ramsey's statement that she "is the only one with firsthand knowledge and experience in the very court in which she is a candidate," and that the evidence does not support the claim that Ramsey has stated she was the "ONLY candidate who has worked in Department No. 1," and to that extent Kimble-Simms has failed to establish Ramsey engaged in an unfair election practice; and,
- (iv) That Kimble-Simms must within ten (10) calendar days of the entry of this Decision correct any statement on her campaign signs, printed materials and website stating "Pro Tem Judge" by either eliminating this statement or including an appropriate qualifying statement, for example, "Former" or "Previous service as"; and,
- (v) This decision shall be published in accordance with Rules 4.4 and 4.5 Rules of the Standing Committee on Judicial Ethics and Election Practices.

DATED this 5<sup>th</sup> day of May, 2011.

NEVADA STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

By: *Dan R. Reaser*  
Dan R. Reaser, Chairman