

**BEFORE THE STATE OF FLORIDA
COMMISSION ON ETHICS**

Complaint No. 15-134

In re: ALBERT (AL) HADEED, Respondent.

PETITION FOR COSTS AND ATTORNEY'S FEES

Respondent, Albert J. Hadeed, pursuant to Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code, submits this petition for costs and attorney's fees against Complainant, John Ruffalo, with respect to the above referenced complaint and, in support thereof, states:

1. On or about June 18, 2015, Mr. Ruffalo filed a complaint with the Commission on Ethics against Al Hadeed, a copy of which is attached as Exhibit A. A Public Report and Order Dismissing the Complaint for failure to constitute a legally sufficient complaint was rendered on October 28, 2015. *See Exhibit B.*

2. As evidenced herein, the complaint by Mr. Ruffalo was filed with a malicious intent to injure the reputation of Mr. Hadeed, and it was filed with knowledge that it contained one or more false allegations, or with reckless disregard for whether it contained false statements of facts material to alleging a violation of the Code of Ethics.

Standard for Claim for Attorney's Fees and Costs

3. Section 112.317(7), Florida Statutes, provides as follows:

In any case in which the commission determines that a person has filed a complaint against a public officer or employee with a malicious intent to injure the reputation of such officer or employee by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this part, the complainant shall be liable for costs plus reasonable attorney fees incurred in the defense of the person

complained against, including the costs and reasonable attorney fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

Construing the requirements of Section 112.317(7), Florida Statutes, the First District Court of Appeal concluded:

Based on the text of the statute, the elements of a claim by a public official for costs and attorney fees are that (1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material.

Brown v. State, Commission on Ethics, 969 So. 2d 553, 560 (Fla. 1st DCA 2007) *rev. denied* *Burgess v. Brown*, 980 So. 2d 1070 (Fla. 2008).

Malicious Intent to Injure Reputation of Mr. Hadeed

4. This is one of a series of 22 complaints¹ filed by Mr. Ruffalo and other political activists acting in concert with him. The complaints have been filed variously with this Commission, the Florida Elections Commission (FEC), The Florida Bar, the local circuit court, and the local State Attorney against public officials in Flagler County. There are similarities of structure, content, and purpose among the complaints filed by this group of activists which exhibit a concerted effort to cast local officials in a false light and besmirch their reputations. For instance, entire paragraphs of the present complaint are completely or substantially repeated in a nearly contemporaneous complaint filed by another member of the group against a Flagler County Commissioner. *Compare*, Exhibit

¹ A recent review of the universe of complaints revealed that 22 complaints had been filed against Flagler County officials. Previously 19 complaints have been referenced.

A, Part 1, ¶ 1 *with* Ethics Complaint 15-145, ¶ 1. *Compare also*, Exhibit A, Part 1, ¶¶ 16 - 18 *with* Ethics Complaint 15-145, ¶¶ 18 - 20.

5. Mr. Hadeed, attorney for the Flagler County Board of County Commissioners, has been the subject of four complaints filed by this group: Ethics Complaint 14-233 filed by Kimberle B. Weeks; Florida Bar Complaint 2015-30,587 (7B) also filed by Ms. Weeks; Florida Bar Complaint 2016-30,033 (7B) filed by Mr. Ruffalo; and this complaint - Ethics Complaint 15-134 also filed by Mr. Ruffalo.

6. In the present complaint, Mr. Ruffalo asserts allegations with the intent to impugn and malign Mr. Hadeed. Mr. Ruffalo states numerous alleged ethics allegations in a conclusory fashion without personal knowledge or a scintilla of evidence and prefaced with qualifiers such as, “it has been said,” “it is unknown if,” and “it has yet to be determined.”

7. As one example, Mr. Ruffalo alleges *ipse dixit* that, the Flagler County Clerk of Court, in 2007, paid Mr. Hadeed for outstanding invoices in return for his helping the Clerk to get elected. As another example, Mr. Ruffalo states that he does not know whether the County’s insurance provider paid for a settlement of personal claims against two commissioners with the Florida Elections Commission, but then alleges that if the insurance provider did pay the settlements, “...it was due to the manipulative promotion of county attorney Al Hadeed...” *See*, Exhibit A, Part 1, ¶ 14.

8. Mr. Ruffalo intended the complaint to damage the reputation of Mr. Hadeed as demonstrated by the vitriolic tone and sheer repetition of defamatory allegations to describe Mr. Hadeed and his actions as a County Attorney in over sixty paragraphs of allegations: “sneaky, underhanded,” “wanton, willfully, knowingly, intentionally,” “premeditated calculations,” “misleading,” “misfeasance and malfeasance,” “hidden

agenda,” “collusion,” “deceitful, unethical, harmful,” “incompetent or corrupt,” “disturbing,” “distorting and spinning,” “manipulative,” “conniving,” “unethical, dishonest, deceitful, and despicable.”

False Allegations Contained in the Complaint

9. In the complaint, Mr. Ruffalo alleges Mr. Hadeed intentionally misled the Board of County Commissioners by advising the Board to consider voting on findings that the claims filed arose out of their public duties and that defending them serves a public purpose. Mr. Ruffalo further alleges that Mr. Hadeed sought to intimidate and shift his own responsibility to the Board by advising that the findings were required by law for the Board to make. Too, Mr. Ruffalo alleges that Mr. Hadeed should have known that he and the Commissioners were personally responsible for their own legal defenses since they were named individually as respondents in the complaints and were served at their home addresses. Therefore, according to Mr. Ruffalo’s complaint, Mr. Hadeed and the commissioners secretly colluded to arrange for the County to pay for the legal defense of the claims, knowing that such actions violated the Ethics Code and were otherwise unlawful. At the same time, Mr. Ruffalo alleges that Mr. Hadeed hid the fact that a complaint against himself would be included in the findings.

10. Despite these allegations, Mr. Ruffalo acknowledges in his complaint that Mr. Hadeed’s advice to the Board and the Board’s vote on the findings occurred in a public meeting on December 15, 2014. Moreover, Mr. Ruffalo knew the allegations were false when he filed his complaint. The transcript and audio of Mr. Hadeed’s statement to the Board, which Mr. Ruffalo submitted with his complaint, as well as the official minutes of the Board which were readily accessible on the Clerk of Court’s website and attached here as Exhibit C, all demonstrate that Mr. Hadeed went to great length to explain why the

findings were required by law. Mr. Hadeed also explained that the complaints at issue concerned how the Board and Mr. Hadeed, as County Attorney and Canvassing Board Attorney, discharged their responsibilities under the elections laws.

11. As outlined in Mr. Hadeed's presentation to the Board, the legal requirements for submitting such claims to the County's insurance provider are based on the Supreme Court decision of *Thorner v. City of Fort Walton Beach*, 568 So. 2d 914, 917 (Fla. 1990) and as interpreted by the Attorney General in AGO's 94-11 and 91-58 and as further provided by the Legislature in Section 112.08(2)(a), Fla. Stat., which authorizes local governments, among other things, to procure legal expense insurance. Moreover, Mr. Hadeed informed the County Commission that insurance coverage was only available for allegations involving actions as county commissioners and not for any personal allegations, such as campaign related issues.

12. The Board made similar findings required under the foregoing authorities at its meetings on July 6, 2015 and September 21, 2015. Mr. Hadeed used similar instructions in response to subsequent complaints. Mr. Ruffalo had no reason to believe that the findings were made in violation of the law, both before he filed his complaint as well as afterwards.

13. Mr. Ruffalo also asserts in a related allegation that Mr. Hadeed and the Commissioners broke the confidentiality rules of the Ethics Commission by sharing the complaints with Mr. Hadeed in order to accomplish their secret plan of having the County or its insurance provider pay for the legal defense of the claims against them. However, the Commission's complaint form, of which Mr. Ruffalo availed himself in filing the present complaint against Mr. Hadeed and easily locatable on the Commission's website, clearly states the rules of confidentiality do not apply to a respondent. Further, providing the

complaint to the County's chief attorney for consideration in the ordinary course of business could hardly be considered a breach of statutory confidentiality by any measure.

14. In addition, Mr. Ruffalo alleges in his complaint that Mr. Hadeed failed to advise Commissioner George Hanns to step down from the Flagler County Canvassing Board during the 2014 Election Cycle for allegedly endorsing an incumbent candidate, Commissioner Frank Meeker. According to the complaint, Mr. Hadeed's purpose in keeping silent was to protect his employer, Mr. Hanns, in order to maintain his own position as Canvassing Board Attorney and County Attorney. *See*, Exhibit A, Part 3, page 16.

15. Mr. Ruffalo, who has requested numerous public records of various County officials, made these allegations under oath without investigating the facts, the falsity of which would have been apparent with very little inquiry, such as through the public records of the Canvassing Board. According to the transcripts and minutes of the November 3, 2014 and November 4, 2014 Canvassing Board meetings, Mr. Hanns did not endorse Mr. Meeker and stated as much for the record when the issue was raised. No other member of the Canvassing Board or the public contended otherwise. Moreover, Mr. Hadeed did not remain silent on the matter. On the contrary, he indicated for the Canvassing Board and the Supervisor of Elections' attorney, Ms. Roberta Walton, the exact language in a Division of Election opinion on this point and clarified how the Division of Elections interprets the statute involving disqualification of Canvassing Board members as requiring intentional action and not perceived action, and Ms. Walton agreed on this point at the November 4, 2014 meeting. *See*, Exhibit D, Transcript Excerpt, pages 77 - 81, Flagler County Canvassing Board, November 4, 2014. In addition, on April 21, 2015, prior to Mr. Ruffalo filing the present complaint, the Elections Commission dismissed

Complaint FEC 14-476, filed by one of Mr. Ruffalo's cohorts, specifically finding the same allegation to be legally insufficient. *See*, Exhibit E, Florida Elections Commission, Letters of Dismissal, Case No.: FEC 14-476. That dismissal was well covered by the local press, including by the reporter whose articles Mr. Ruffalo liberally appended to his complaint.

16. As mentioned earlier, Mr. Ruffalo also states in his complaint that he does not know whether the County's insurance provider paid the Elections Commission for the personal settlements of two County Commissioners. At the same time however, Mr. Ruffalo alleges that due to the manipulation of Mr. Hadeed, the County's insurance provider did pay one of the settlements, that of Commissioner Nate McLaughlin. *See*, Exhibit A, Part 1, ¶ 16. Mr. Ruffalo correctly notes that the consent order of the Elections Commission requires Mr. McLaughlin to pay his own legal fees, but ignores that the same consent order specifically states, "[t]he civil penalty shall be paid by money order, cashier's check, or attorney trust account check." Thus, Mr. Ruffalo knew when he filed his complaint that there was nothing improper about the payment being made through an attorney's trust account.

17. Mr. Ruffalo's complaint with a sum total of over 180 pages contains other allegations that are false or were made with reckless disregard for the truth, but for economy of space are not listed here. The above-referenced allegations among others were material to the alleged violations of the Code of Ethics and the need of Mr. Hadeed to seek legal counsel with respect to the complaint filed against him by Mr. Ruffalo.

Claim for Attorney Fees

18. As noted in the Public Report and Order Dismissing Complaint, it is not inconsistent with the proper performance of public duty for a board of county commissioners to further a publicly provided defense for themselves in matters arguably connected to their public purpose. “Indeed, such conduct would seem to be prudent and to serve a public purpose regardless of whether a benefit also might accrue to the board members. Blackburn v. Commission on Ethics, 589 So. 2d 431 (Fla. 1st DCA 1991).” See, Exhibit B, ¶ 5.

19. Consistent with defending the complaint alleging a violation of the Code of Ethics, Mr. Hadeed sought the assistance of undersigned counsel in connection with this complaint. Mr. Hadeed also notified the County’s insurer of a potential claim.

20. Through the date of filing this petition the amount of attorney’s fees and costs incurred on behalf of Mr. Hadeed in the defense of this complaint are \$918.00. Attorney’s fees have been paid by Flagler County’s insurer at an hourly rate of \$180.00, which is below undersigned counsel’s standard hourly rate for ethics representation. In addition, the Flagler County attorney’s office has devoted attorney time in assisting in defense of this complaint for which it should be reimbursed.²

² See *Couch v. Commission on Ethics*, 617 So. 2d 1119, 1126-1127 (Fla. 5th DCA 1993):

Section 112.317(8) does provide for an award of attorney's fees against a complainant when the respondent was represented by counsel of her public agency, as was [Chapin] and is not limited to situations in which a respondent contracts personally and directly with a private attorney for representation or pays fees from her own pocket.

The Legislature intended, in enacting Chapter 75-208, Laws of Florida, which is codified at Section 112.317(8), Florida Statutes (the costs and attorney's fee provision at issue here), to punish persons who make malicious and baseless ethics complaints, such as that found by the Hearing Officer and this Commission to have been made by Mr. Couch against Ms. Chapin, and thereby intended to deter similar conduct. The Hearing Officer adheres unduly to what he considers to be the strict language of the provision and focuses on the

21. To the extent Mr. Hadeed recovers fees and costs in this proceeding, it is his intent that the County's insurer and Flagler County be reimbursed for the fees paid or incurred in the defense of this complaint and that undersigned counsel be paid a reasonable fee in connection with his representation in this matter.

Conclusion

22. Because the complaint was filed with malicious intent to injure the reputation of Mr. Hadeed, Respondent in Complaint 15-134, and because it was filed with knowledge that it contained one or more false allegations or with reckless disregard for whether it contained false allegations of fact material to a violation of the Code of Ethics, Mr. Hadeed is entitled to an award of costs and attorney's fees pursuant to Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code.

WHEREFORE, Mr. Hadeed requests:

A. That the Commission determine that the facts and grounds contained herein are sufficient to state a claim for costs and attorney's fees; and

phrase "incurred by the person complained against" in coming to his conclusion and recommendation that costs and attorney's fees should not be awarded.

The Commission further concluded that

the meaning of the term "incur" encompasses situations such as that of the Respondent, Ms. Chapin, and is not limited to situations where a Respondent directly pays fees from his or her own pocket to an attorney.

The Commission, as created by Article II, Section 8 of the Florida Constitution, is the proper agency to interpret the ethics statutes of Chapter 112, and its interpretations will be accorded judicial deference by this court, so long as they are consistent with (cont.) legislative intent and supported by competent, substantial evidence. *Public Employees Relations Comm'n v. Dade County Police Benevolent Ass'n*, 467 So.2d 987 (Fla. 1985). The Commission properly allowed recovery of attorney's fees by Chapin, represented by county attorneys, for the hours expended in obtaining dismissal of Couch's complaint, because the award effectuates the legislative intent of [section 112.317\(8\)](#) to penalize frivolous and malicious Commission complaints.

B. That the Commission refer the petition to the Division of Administrative Hearings to conduct a formal hearing and to prepare a recommended order regarding Mr. Hadeed's entitlement to an award of costs and attorney's fees and the amount of such costs and fees consistent with the requirements of Section 112.317(7), Florida Statutes, and Rule 34-5.0291, Florida Administrative Code.

Respectfully submitted this 25th day of November, 2015, by:

/s/ Mark Herron

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