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Kimberly Bonder Rezanka



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, Florida 32317-5709

325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303

Virindia Doss
Executive Director

C. Christopher Anderson, III
*General Counsel/
Deputy Executive Director*

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

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MEMORANDUM

TO: Members, Florida Commission on Ethics
FROM: Chris Anderson
SUBJECT: Attorney Fees Petition, Complaint No. 15-134
DATE: December 30, 2015

Accompanying this memorandum please find a draft Order Dismissing Petition For Costs And Attorney's Fees. The draft is for your use in disposition of the costs and attorney's fees petition filed by the Respondent, Albert Hadeed, in Complaint No. 15-134, In re ALBERT (AL) HADEED.

The draft is intended to assist you and to serve as a working document for your use as you consider (at your public meeting on January 22) whether to dismiss the petition based on the petition, the Commission's proceedings on the underlying complaint, and any argument presented by the Respondent or the Complainant (John Ruffalo). No Commission member has participated in drafting this recommendation or otherwise expressed an opinion on its contents, and you are not bound by staff's recommendation.

cc (with draft): Mark Herron, Esquire
Mr. John Ruffalo

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re ALBERT (AL) HADEED,)
)
)
)
Respondent.)

Complaint No. 15-134

Final Order No. 16-__

ORDER DISMISSING PETITION
FOR COSTS AND ATTORNEY'S FEES

On Friday, January 22, 2016, the Commission on Ethics met in public session and considered the petition for costs and attorney's fees (hereinafter "the petition") filed by Albert Hadeed (the respondent in the original ethics complaint proceeding herein and the petitioner regarding the petition for costs and fees, hereinafter "Hadeed") against John Ruffalo (the complainant in the original ethics complaint proceeding herein and the respondent regarding the petition for costs and fees, hereinafter "Ruffalo"), citing Section 112.317(7), Florida Statutes, and Commission on Ethics Rule 34-5.0291, Florida Administrative Code.

Both Hadeed and Ruffalo were provided notice of the place, date, and time of the Commission's public session consideration referenced above, and both had the opportunity to appear and make argument.

The Commission voted to dismiss the petition because the facts and grounds alleged in the petition are not sufficient to state a claim for costs and reasonable attorney's fees, based on the following analysis:

1. Section 112.317(7) provides:

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's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's 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.

2. Commission Rule 34-5.0291, Florida Administrative Code, provides in pertinent part:

(2) The Commission shall make such a determination only upon a petition for costs and attorney's fees filed with the Commission by the public officer or employee complained against within 30 days following a dismissal of the complaint. Such petition shall state with particularity the facts and grounds which would prove entitlement to costs and attorney's fees. Staff shall forward a copy of said petition to the complainant by certified mail, return receipt requested.

(3) If the facts and grounds alleged in the [petition] are not sufficient to state a claim for costs and reasonable attorney's fees, the Commission shall dismiss the petition after an informal proceeding. . . . [Emphasis supplied.]

3. The statute sets a very high bar for the recovery of fees. Brown v. State, Commission on Ethics, 969 So. 2d 553, 560 (Fla. 1st DCA 2007). The elements of a valid claim for costs and attorney fees under Section 112.317(7) are that the ethics complaint was made with a malicious intent to injure the public official's reputation, that 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 that the statements were material. Brown, at 560. This standard for recovery is not a "prevailing party" standard.

4. We find that the petition is not sufficient as to allegations concerning the element that a complaint must be made with a malicious intent to injure one's reputation. Rather than

substantively alleging such an intent based on contents of the complaint material to a violation of the Code of Ethics, the petition chronicles several filings, in forums in addition to the Commission on Ethics, made by persons other than Ruffalo or made by Ruffalo in another ethics complaint, attempting thereby to characterize the ethics complaint as a malicious filing.

5. As to required petition contents that the person filing the complaint knew that the allegations made about the official were false or made the allegations about the official with reckless disregard for the truth, and that the false or reckless allegations were material, we also find the petition to be lacking. The only factual allegations material to a violation of the Code of Ethics contained in the complaint are that Hadeed should not have sought approval from the Board of County Commissioners to seek a publicly-provided or publicly-funded legal defense for Board members or himself, as to ethics complaints, elections complaints, and Florida Bar complaints, and that Hadeed was involved with defense of a lawsuit involving the County; see paragraphs 5 and 7 of the Public Report And Order Dismissing Complaint filed in this matter on October 28, 2015. However, nowhere in the petition is it asserted that Hadeed did, in fact, not seek approval from the Board to seek a public legal defense, or that he was, in fact, not involved with defense of a lawsuit involving the County, much less that he did not seek such approval or was not so involved and that Ruffalo knew when he filed the complaint that Hadeed did not seek approval and was not so involved but, nevertheless, filed a complaint alleging that he sought approval and was involved. Section 112.317(7) expressly provides that complaint allegations within its ambit must be assertions of "fact," not statements of law, legal reasoning, or premature observation of what the Commission might ultimately determine in a matter, as to whether a person complained against did or did not violate the Code of Ethics. In this regard, while the petition

is replete with conclusory, nonfactual assertions, its factual assertions are inadequate. In addition, the complaint's dismissal by the Commission for lack of legal sufficiency and concomitant lack of an investigation of the complaint by the Commission is supportive of the complaint not containing any false allegation of fact *material to a violation of the Code of Ethics*, assuming for the sake of argument that it contained false non-material factual allegations.¹ Thus, although the petition concludes that Ruffalo's filing entitles Hadeed to costs and fees, it, nevertheless, substantively does not allege that Ruffalo filed the complaint knowing that it contained false allegations of fact material to a violation of the Code of Ethics or that he filed it with reckless disregard for whether it contained such allegations.

6. Thus, the petition does not state a claim for costs and attorney's fees under Section 112.317(7) as explained in Brown.

Accordingly, the petition is hereby dismissed.

ORDERED by the State of Florida Commission on Ethics meeting in public session on January 22, 2016.

Date Rendered

Stanley M. Weston
Chair, Florida Commission on Ethics

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL

¹ One allegation of the complaint not material to a violation of the Code of Ethics (administered by the Commission on Ethics) is that treated in paragraph 6 of the Public Report; instead, the allegation concerns conduct possibly material to possible violations of standards administered by The Florida Bar.

REVIEW UNDER SECTION 120.68 AND SECTION 112.3241, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, AT EITHER P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709, OR 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303; AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Mr. Mark Herron, Attorney for Albert Hadeed
Mr. John Ruffalo