

IN THE ADMINISTRATIVE HEARING COMMISSION

RON CALZONE,)	
Petitioner,)	
vs.)	Case No. 15-1450
)	
MISSOURI ETHICS COMMISSION,)	
Respondent.)	
_____)	

PETITIONER’S RESPONSE TO RESPONDENT’S SUR-REPLY

On February 3, 2016, this Commission held a hearing on Petitioner’s Motion for Judgment on the Pleadings. A few hours after that hearing, Respondent filed a sur-reply largely restating its position that when an attorney files a complaint on behalf of a corporation, that complaint is filed by a “natural person” within the meaning of § 105.957, RSMo. The Administrative Hearing Commission should disregard these arguments, both on their merits and because they are raised for the first time here.

1. Missouri law merely states that complaints submitted to the Ethics Commission must be “in writing.” The statute neither references, requires, nor limits complaints to any particular document provided or favored by the Ethics Commission. § 105.957, RSMo.

2. The same statute specifies that complaints submitted to the Ethics Commission shall be “filed only by a natural person.” *Id.*

3. Whether a complaint submitted to the Missouri Ethics Commission is filed by a “natural person” where an attorney has clearly and explicitly stated as part of a complaint that he is filing that complaint on behalf of a corporation is a question of law, not a question of fact.

4. To the extent there is any question of fact here, it is not whether Michael A. Dallmeyer is himself a natural person; all attorneys are natural persons, as no state permits corporations (or any other form of non-natural person) to be admitted to the bar. The material question is whether Mr. Dallmeyer filed the complaint on behalf of a corporate client of his firm, and that question is conclusively answered from the face of the complaint itself. There is no serious or legitimate dispute as to this point.

5. The Ethics Commission has conceded that the complaint (including the cover letter) “speaks for itself,” and that it was filed “on behalf of a non-natural person.” Ans. at 8, ¶ 23 & 27.

6. As part of the complaint against Calzone, Mr. Dallmeyer filed a cover letter (on law firm stationary) stating in clear language that he was filing “on behalf of” his firm’s client, the Missouri Society of Governmental Consultants, a corporation. That corporation’s board had voted to authorize the complaint and to hire Mr. Dallmeyer as its counsel in the matter.

7. The Ethics Commission’s attempts to use Petitioner’s shorthand reference to the complaint against him is unavailing. *See* Sur-Reply at 2. Petitioner pled that “Mr. Dallmeyer’s complaint included a cover sheet that specifically stated that he was filing on behalf of the Society, and not in a personal capacity.” Pet. at 5, ¶ 33. *See also*, generally, Pet. at 4-6. No amount of italicization can change this fact.

8. § 105.957, RSMo., expressly forbids complaints to be filed by non-natural persons. This explains why the form the Ethics Commission has prepared provides no

space within which an attorney might note the identity of a client on whose behalf a complaint is being filed.

9. Mr. Dallmeyer explicitly and unambiguously reaffirmed his cover letter's statement that he was filing as counsel on behalf of a non-natural person by his use of the term "Attorney" after his name.

10. Mr. Dallmeyer made as clear as he possibly could in the written complaint submitted to the Missouri Ethics Commission that he was acting as an attorney for a corporation in filing this particular complaint. Contrary to the Ethics Commission's suggestion, Dallmeyer's statements do not merely identify his "subjective motivation" for filing the Missouri Society of Governmental Consultants' complaint. His statements instead identify his objective role as an attorney representing a non-natural person and, within the scope of that representation, enabling it to file an unlawful complaint.

11. As yet another indication of the problems with the MEC's complaints process, complainants using the Ethics Commission's preferred form verify their complaint in "Part 2" of the form, and swear only that "*the foregoing* information in th[e] complaint" is true. The foregoing information includes only the identities of complainant and respondent. Here, that information includes the cover letter (which preceded the verification in Part 2 of the form) and the fact that Mr. Dallmeyer was filing as an "Attorney." But the "STATEMENT OF FACTS" is Part 3 of the form—that is, it *follows* the verification, and the verification only applies to information preceding it. Consequently, it is possible that no complaint filed on this form is properly sworn to at all, as the factual recitation may not be covered by the verification.

12. The Ethics Commission may not assert jurisdiction over complaints clearly filed by non-natural persons simply because, as in this case, an attorney who has clearly stated that he is filing a complaint on behalf of a corporation declines to reiterate this fact on the Ethics Commission's pre-prepared form, or to re-identify the non-natural person on whose behalf he is filing the complaint.

13. The Ethics Commission has proffered a half-century old decision by an out-of-state intermediate court of appeals as "the one case" its counsel is aware of where this question has arisen. This lack of authority is unsurprising, because the fact that corporations must act through natural persons, especially in legal matters, is a centuries-old insight that is seldom litigated. In any event, the case is easily distinguished. Plaintiffs in that case argued that an attorney was not a natural person where, in signing his name, he indicated an official title. This argument was rejected, using reasoning the Ethics Commission declined to state. The reasoning was:

A complete answer [to the relevant argument] would appear to be supplied by the almost self-evident observation that when the Legislature has provided *who* shall initiate certain criminal actions, and also *how* all criminal actions shall be initiated, it did not intend that the language used in the general section be given an interpretation that would deny the party specified in the special act the power to fulfill the commandments thereof.

Rocklite Products v. Mun. Court of Los Angeles Judicial Dist., 217 Cal. App. 2d 638, 646 (Ct. App. 1963) (emphasis in original, statutory citations omitted).

14. Petitioner agrees that where a legislature “has provided who shall initiate” a complaint and “how it shall be initiated,” strained interpretations should not be applied that make it impossible to obey those commands. There is no such difficulty here. The legislature has *limited* the jurisdiction of the Ethics Commission to complaints filed by natural persons, and also commanded how such complaints shall be filed (in writing, not on a particular form). Natural persons will face no difficulty in filing complaints with the Commission

15. Because the criminal defendant in *Rocklite Products* advanced an argument that would have made it impossible to bring any criminal case in California (because the state, like a corporation, acts through counsel), the California Court of Appeals was forced to construe the statute to avoid an absurdity (that the California legislature had intended to nullify the entire criminal code). No such absurdity is present here, unless it is of the MEC’s making, because complaints before the MEC are brought by private parties, and not by non-natural persons (or the State of California) that must act through counsel. In fact, such non-natural persons are prohibited from bringing a complaint, which is the point.

16. The MEC’s new arguments, none of which is meritorious, are raised late in this litigation. As has become a pattern, the MEC did not make them as part of its deeply flawed Probable Cause proceeding, or its findings below. These attempts to relitigate that proceeding, and to cure the MEC’s numerous mistakes of law and fact, themselves harm, inconvenience, and burden Mr. Calzone—and, by extension, any civically engaged citizen who cannot obtain *pro bono* counsel able to respond to the MEC’s ever-multiplying post-hoc justifications. Such individuals will reasonably fear that the MEC will exercise

similarly-misplaced zeal in their circumstances, and will circumscribe their activity accordingly. The MEC's approach to litigation should be rejected as firmly as the legal errors that have led it to this point.

Conclusion

For the foregoing reasons, and those already stated in previous filings, the Administrative Hearing Commission should grant Mr. Calzone's Motion for Judgment on the Pleadings.

Dated: February 4, 2016

Respectfully submitted,



David E. Roland Mo. Bar #60548
FREEDOM CENTER OF MISSOURI
P.O. Box 693
Mexico, MO 65265
Phone: (314) 604-6621
Fax: (314) 720-0989
Email: dave@mofreedom.org

Allen Dickerson*
CENTER FOR COMPETITIVE POLITICS
124 S. West St., Suite 201
Alexandria, VA 22314
Phone: (703) 894-6800
Fax: (703) 894-6811
Email: adickerson@campaignfreedom.org

Counsel for Petitioner

*admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that on February 4, 2016, I served a true and correct copy of the above Response to Respondent's Sur-Reply on Respondent's counsel at:

Curtis R. Stokes
P.O. Box 1370
Jefferson City, MO 65102
Phone: (573) 751-2020
Fax: (573) 522-2226
Curt.Stokes@mec.mo.gov

Attorney for Respondent



David E. Roland