

IN THE SUPREME COURT OF THE STATE OF MONTANA

In re Matter of Inquiry Concerning	)	
INQUIRY CONCERNING COMPLAINT OF	)	
ELIZABETH HALVERSON, JACQUELYN	)	
HUGHES, KAREN JARUSSI, AND HON.	)	PR 20-0072
GREG TODD,	)	
	)	
Complainants,	)	Objection to Disposition
	)	and Recommendation for
	)	Public Censure
v.	)	
HONORABLE ASHLEY HARADA,	)	
District Court Judge, Thirteenth	)	
Judicial District,	)	
	)	
Respondent.	)	
	)	

This Objection to Disposition and Recommendation for Public Censure is submitted by Karen Jarussi, one of the Complainants in this matter, to address the inadequacy of public censure as a consequence for District Judge Ashley Harada's admitted and repeated ethical violations, and the violations of State and Federal law and tortious conduct underlying them.

I. The Second Amended Formal Complaint

In its Second Amended Formal Complaint ("Complaint") (Ex. 1), the Judicial Standards Commission of the Supreme Court of the State of Montana ("the Commission") charged District Judge Ashley Harada ("Harada") with six separate Counts of violations of the Montana Code of Judicial Conduct ("the Code"). These Code violations, in turn, encompassed violations of State and Federal wage laws, perjury, and defamation. A brief summary of the Counts is as follows:

- Count I: Harada posted or allowed to remain posted three partisan political endorsements on her Facebook page, in violation of Rules 4.1(A)(4) and 4.1(A)(7).
- Count II: Harada made a contribution to a Democratic political candidate and then represented that she had only contributed to conservative candidates, in violation of Rules 4.1(A)(4) and 4.1(A)(1).
- Count III: Harada publicly endorsed two Republican candidates for public office, in violation of Rules 4.1(A)(3) and 4.1(A)(7).
- Count IV: Harada misrepresented her experience as an attorney during her campaign, in violation of Rule 4.1(A)(10)
- Count V: Harada made a false or misleading statement to the University of Montana Law School to preclude her employee, H.W.,¹ admission to the law school, because of a personal grievance, in violation of Rule 4.1(A)(10). [Note: Hanna was Harada's former nanny, babysitter, and/or office worker.]
- Count VI: Harada employed a "nanny, babysitter and/or office worker" without proper reporting to the Internal Revenue Service, Montana Department of Revenue or Workers' Compensation, but denied that she was an employee while under oath in a deposition in this matter and while being a Judge, in violation of Rules 1.2 and 2.7.

Harada relied on information from her accountant when she stated in her 2019 deposition that Hanna was not an employee in 2017.

Some of these Counts contain factual errors or omissions and therefore lack important information and context necessary to understanding the full scope and depth of Harada's unethical course of conduct during her campaign. The supplemental information presented below should be found in the record developed by the Commission over the past 14 months, assuming that all investigative information was transmitted by

¹ "H.W." has been publicly identified in a March 15, 2020, Billings Gazette news article as Hanna Walter, and Jarussi will hereafter refer to her by name in this Objection. In that article, Harada's attorney commented about the case and offered excuses for Harada's conduct, but did not deny or even respond to uncontroverted statements by Hanna's attorney that Hanna was employed in Harada's law office from 2014 to 2017, and even had her own email address with the firm's email extension. (See Ex. 13)

the Commission to the Montana Supreme Court in connection with the Commission's Disposition and Recommendation.

Count I: Omits that the Yellowstone County Republicans Facebook endorsement was originally posted on June 24, 2018 (Ex. 2); that Harada was notified of her ethical violation in doing so by a constituent on October 4, 2018, and that Harada failed to take the post down until well after the November, 2018, election. (Ex. 3) This demonstrates the intentional nature of this violation and other prohibited political endorsements by Harada, and that the violation was repeated every day over a period of many months.

Count II; Omits that Harada's representation about her political contribution history was made in a mailing sent to Yellowstone County Voters, and therefore had potential for significant impact on the electoral process.

Count III: Same as Count I. Omits that Harada was specifically advised on October 4, 2018, that political endorsement posts on Facebook are prohibited, and she kept them up until after the November election.

Count IV: Incorrectly alleges that Harada made a false or misleading statement about her years of law experience by attributing two years of experience under the student practice rule while in law school. The fact is that Harada was never alleged to have attributed two years of law school experience to herself during the campaign. She only asserted this excuse for the first time in her Answer to the four underlying Complaints in this proceeding, suggesting that it was reasonable to rely on her legal experience as a student when misrepresenting her experience. (Harada's Response to JSC 19-03, 19-07, 19-08, and 19-14, May 1, 2019, pg. 25).

As alleged and documented in my Complaint, during the campaign, Harada instead affirmatively overstated the time she served as a federal law clerk for one judge (not the entire federal judiciary, as she repeatedly stated) and practiced law *in her own law firm*, by two years. (Ex. 4, pg. 5-6; see also Ex. 5). These representations were made repeatedly and publicly over the course of the campaign, in personal appearances, mailers, and articles/statements in the Billings Gazette, and were significant because experience was a focal issue between the candidates.

Count V: Does not point out that this misrepresentation amounts to defamation, in addition to an ethical violation.

Count VI: Does not point out that these admitted failures to report on Hanna's employment constituted violations of Federal and State wage laws and Workers' Compensation laws; does not mention that Harada not only

failed to make these required reports, but actually failed to pay Hanna over \$3,000.00 in wages due at the time of her termination in November, 2017, as required by law. (Ex. 4, pgs. 7-8; Hanna testimony)

Incorrectly states that all events involving Hanna occurred prior to Harada being a candidate or judge. ***This is not true.*** In early 2018, according to Hanna, Harada made several partial cash payments of the wages owed to her, and on or about July 10, 2018, Harada sent a letter and a check written on the Harada Law Firm account to Hanna, acknowledging past due wages of \$2,900.00 and enclosing a check for those wages, minus damages supposedly caused by Hanna's puppy. The defamatory letter written to U of M to sabotage Hanna's admission to law school was written in June of 2018. And in October of 2018, Harada lied to constituents at a public event regarding her employment of Hanna. (Ex. 3). These events all occurred during the campaign. (*Id.*)

Omits that the advice given by Harada's accountant, as described in the letter from the accountant which is relied on by Harada as a defense to all of Count VI, actually only addresses Hanna's work as a nanny/ babysitter/petsitter and does not in any way address Hanna's status as an office worker. (Ex. 6) It therefore cannot serve as a defense to Harada's misrepresentations to the investigator while in a deposition and under oath, or her failure to comply with federal and state wage laws, with regard to Hanna's work at Harada's law firm.

II. Harada's Response

Harada's Answer to the Second Amended Formal Complaint (Ex. 7) affirmatively establishes the following:

- Count I: Harada ADMITS violations of Rules 4.1(A)(4) and 4.1(A)(7), based on her failure to remove three prohibited partisan political endorsements from her campaign Facebook page.
- Count II: Harada ADMITS violations of Rules 4.1(A)(4) and 4.1(A)(1) by making a prohibited partisan donation to a Democratic candidate during her campaign and then falsely stating that she had contributed only to conservative candidates.
- Count III: Harada ADMITS to violations of Rules 4.1(A)(3) and 4.1(A)(7) by endorsing two other Republican candidates for political offices.
- Count IV: Harada ADMITS to violating Rule 4.1(A)(10), when she misrepresented her experience as an attorney during the campaign by attributing two years of

experience and approximately 80 jury trials that she did not have as an attorney.

Count V: Harada ADMITS that she violated Rule 4.1(A)(10) when she made a false or misleading statement to the University of Montana Law School to preclude Hanna's admission to the law school, because of a personal grievance.

Count VI: Harada ADMITS that she violated Rules 1.2 and 2.7 when she employed Hanna as a a nanny and/or office worker and failed to properly report to appropriate federal and state agencies, and later denied that Hanna was an employee, while under oath in a deposition in these proceedings.

Harada relies on advice of an accountant to justify both her failures to report and her denial under oath.

Thus, Harada has admitted to two Counts involving *five* separate improper political endorsements; has admitted to one Count involving a prohibited partisan contribution; has admitted to three Counts involving misrepresentations: One involving repeated misrepresentations of her legal experience during the campaign; one which was under oath during a deposition in these proceedings and constitutes perjury; and one which was made to blackball Hanna from attending law school at the U of M for personal reasons and amounts to defamation. Harada has also admitted to one Count involving conduct amounting to violations of State and Federal wage laws and Workers' Compensation laws.

III. Mitigating Factors

The Commission refers to "mitigating factors" in its Disposition and Recommendation for Public Censure (Ex. 8, pg. 2), but does not identify what these factors are. If they are the excuses and justifications stated in Harada's Answer (Ex. 7), they are insufficient to excuse or justify her conduct.

In Count I, Harada says she contacted the Commission about the Republican Party endorsement, but received no response. This doesn't excuse the other four endorsement-related violations she admits to in Counts I and III. And she ignores that, as the evidentiary record shows, she was specifically confronted about the Republican Party endorsement by Complainant Liz Halverson on October 4, 2018, admitted she knew her ethical obligations under the Rules, and still refused to take them down. (Ex. 3). In any event, every judicial candidate must be charged with knowledge of the Code's clear prohibition on accepting or using political endorsements.

In Count II, Harada contends that the political contribution to Democratic Congressional Candidate John Heenan was actually made by her husband and that she did not ask him to make it. However, documentary evidence in the record shows that Heenan's Congressional campaign, to whom Harada's donation was made, expressly reached out to Harada for clarification of who to attribute the contribution to, since it was written on a Harada Law Firm corporate check. Harada, in her own handwriting, affirmatively responded to Heenan that he should attribute the contribution to "Ashley Harada." (Ex. 9) This documentary evidence/admission overcomes any presumption in Federal Election Law, that the signer of a check should be considered the donor.

In Count III, Harada said she did not understand that the privacy settings on her Facebook page were set in a way that did not meet the requirements of the Code. However, Harada admitted, as she must, that she was responsible for knowing the requirements of the Code during her campaign, including the duty to oversee what others were doing on her behalf.

As to Count IV, Harada attempts to justify adding two years to her resume as an attorney during the campaign, claiming time spent obtaining legal experience under the student practice rule. But this is disingenuous. Harada never mentioned the student practice rule during the campaign; it was raised for the first time in Harada's Answer to the four underlying Complaints was filed, on May 1, 2019. (Harada's Response to JSC 19-03, 19-07, 19-08, and 19-14, May 1, 2019, pg. 25).

The evidence and underlying Complaints show that during the campaign, Harada affirmatively misrepresented her experience not by invoking then student practice rule, but by affirmatively misrepresenting the time she (1) served as a federal law clerk for one Judge (not the entire Montana federal judiciary, as she repeatedly stated) and (2) practiced law *in her own law firm*, by a total of two years. (Ex. 4, pg. 5-6; Ex. 5). These misrepresentations were made repeatedly, in public appearances, campaign literature and mailings, and in Billings Gazette interviews and articles. There was no justification for adding two nonexistent years to Harada's resume of experience as an attorney except to inflate her experience, which was lacking in comparison to her opponent's.

In Count V, Harada does not even pretend to offer any excuse or justification for her defamatory letter to the U of M Law School, concerning Hanna, her former employee, based on a *personal* grievance.

In Count VI, Harada claims she relied on information provided by her accountant when she failed to file required reports with federal and state agencies on her "nanny, babysitter and/or office worker," and denied employment under oath during a deposition in these proceedings.

When one looks at the letter outlining the advice Harada's accountant gave her (Ex. 6), it is plain that it pertained only to activities of babysitting, pet sitting, and/or housesitting. There is no evidence that Harada sought, or obtained, any advice from her accountant regarding her obligations for reporting on an office worker. Again, upon information and belief, there is much evidence in the record, including from Harada herself as well as Hanna, Hanna's family and friends, a private investigator who knew of Hanna when she worked for Harada, numerous attorneys practicing law on the same floor as Harada who observed Hanna at work, and others. If there was any question before today, a *Billings Gazette* article dated March 15, 2020, quotes Hanna's attorney as saying that "Walter's status as an office employee should not have been in dispute...Walter worked as a legal assistant at the Harada Law Firm from 2014-2017, that her duties included proofing legal documents and other administrative support, and that she had her own email address with the firm's email extension." (Ex. 13). There can simply be no question that Hanna worked for Harada Law Firm. And any attorney, especially one as experienced as Harada claimed to be, should know that you have to make withholdings and reports on an office employee. And, first and foremost, you have to actually pay them the wages they have earned that you, as an employer, owe.

Neither the Complaint nor the Answer mention that Harada did not just fail to report on her employee, she completely failed to even pay her over \$3000 in wages owed at the time of her termination in November of 2017. (Ex. 4, pg. 7 and evidence of record). In July of 2018, during the campaign, Harada acknowledged a debt for \$2900 for wages owed to Hanna, by writing a letter and tendering a check written on the Harada Law Firm account (with illegal deductions for damages allegedly caused by the

employee's pet) on July 10, 2018. The undersigned personally saw and held this check in my hand during a visit with Hanna in the summer of 2018. (Presumably, the investigator pursued this avenue in his investigation and there is evidence in the record to substantiate it.)

Thus, while the accountant's letter *may* excuse Harada's failure to make reports and withholdings for her domestic help, it does not in any way explain or justify or constitute a defense to her failure to report, withhold, and even pay Hanna for her office work. And, it does not excuse Harada's misrepresentation (i.e. lie) in her deposition, under oath, that she did not employ Hanna.

Harada's "mitigating factors" are easily disproven and do not excuse or lessen her admitted violations. To the contrary, evidence in the investigator's files should actually warrant enhancing the penalty, because it shows that the scope and egregiousness of the violations exceeds that pleaded in the Complaint and Answer. (Ex. 10).

IV. PUBLIC CENSURE IS INSUFFICIENT IN LIGHT OF HARADA'S ADMITTED VIOLATIONS

"The purpose of the Judicial Standards Commission...is to protect the public from improper behavior or conduct of Judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial conduct on the part of the judiciary and the public; and provide for the expeditious and fair resolution of complaints of judicial misconduct." *Rule 1(b), Judicial Standards Commission Rules* (AF 14-0356) (July 20, 2015).

These purposes are effectuated, in part, through the Code of Judicial Conduct, which establishes standards for the ethical conduct of judges and judicial candidates. *Montana Code of Judicial Conduct, Preamble ¶3*. "Whether discipline should be im-

posed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity non the judicial system or others.” *Code Scope* ¶6.

Here, the transgressions are numerous and serious. When all of the admitted violations are viewed in their entirety, Harada has admitted comprehensive violations of 7 discrete sections of the Code, and multiple violations of 3 sections. Two Counts allege five separate endorsement violations, each warranting and requiring censure at a minimum under *French v. Jones*, 876 F.3d 1228, 1231 (9th Cir. 2017). One Count alleges a prohibited partisan contribution, which Harada then denied despite documentary proof to the contrary. Three Counts allege misrepresentations: one involving repeated public misstatements of her experience in the practice of law, which was a critical issue in the judicial race; the second involving a defamatory letter to blackball her employee, Hanna, from attending law school because of Harada’s own personal grievance; and the third involving perjury, based on Harada’s misrepresentation (i.e. lie) under oath during a deposition in these proceedings, denying that she employed Hanna at all. One Count alleges violations of Federal and State wage law and Workers’ Compensation laws.

This recitation of Harada’s admitted violations does not even include all the alleged and documented violations in the four underlying Complaints, which did not make their way into the Second Amended Formal Complaint, for reasons which are unknown. (Ex. 10).

This pattern of disregarding the ethical rules governing judicial candidates; ignoring the law of employment and wage/Worker's Compensation reporting laws; and the lack of basic integrity and respect for the truth as reflected in Harada's multiple misrepresentations, her perjury in her deposition, and her defamation of Hanna to the law school, started before her campaign began and lasted until after the November, 2018, election.

It is not surprising that Harada has consented to a public censure as a consequence for her admissions to multiple and serious violations of the Code. Indeed, she would be fortunate to receive only this minimum sanction for a course of conduct spanning over a year and involving 5 separate prohibited partisan political endorsements, violations of several other ethical Rules, and encompassing underlying violations of State and Federal law, perjury, and defamation. She is reported to have told people that "no one has the balls to f*&k with a sitting judge" (Ex. 10) and "most of it will just go away and I will get a slap on the wrist." If censure is the only sanction, she will be proven right, and she will succeed in retaining a judicial seat that was obtained by calculated and sustained unethical, illegal, and tortious conduct.

So, what is an appropriate sanction? A good starting point is *French v. Jones*, in which the Ninth Circuit Court of Appeals upheld Montana's prohibition on seeking or accepting or using a partisan endorsement in a judicial campaign, and stated that "[i]f a judge or judicial candidate violates this endorsement provision, the Montana Judicial Standards Commission 'shall' recommend...the censure, suspension, removal, or disability retirement of the judicial officer." Mont. Code Ann. § 3-1-1106(3).'" *French*, 876 F.3d at 1231 (emphasis added).

Harada has admitted to two counts of improper endorsement (Counts I & 3), involving five separate political/partisan endorsements, and her conduct is aggravated by the fact that on October 4, 2018, she was specifically advised by a constituent, Complainant Liz Halverson, that partisan, political endorsements constitute improper ethical violations. Harada refused to take them down and left them on her public campaign Facebook page until after the election. Based on these five violations alone, the Commission-recommended public censure is easily justified and required, under *French*. Then one must consider the many additional violations Harada has admitted to.

Harada admits to making a prohibited partisan contribution to Democratic Congressional candidate John Heenan during her campaign, and misrepresenting to voters that she only contributed to conservative candidates. (Count II). Despite her attempt to blame it on her husband, the evidence shows that Harada herself, in writing, admitted the contribution was hers. (Ex. 9) Misrepresentations about her contributions were then made in mailers disseminated *en masse* to the voting public. (Ex. 11)

From here on, the violations become more egregious and reflective of Harada's overall lack of judicial temperament and character.

Harada admits to "misrepresenting" her experience as an attorney during her judicial campaign, both in terms of her years of experience as an attorney and the nature of her experience. The facts in the record show that she did so repeatedly, in personal appearances, campaign literature and mailers, and in interviews and articles for the Billings Gazette, although not in the way alleged in the Complaint. (See above, pg. 3). Again, despite her attempts to explain it away, the fact remains that she has admit-

ted to misrepresenting (i.e. lying) to the voting public during her candidacy, about the critical issue of her experience as an attorney.

Harada unequivocally admits to making “false or misleading statements” to the University of Montana law school to keep Hanna, her former employee and an aspiring law student, from gaining admission. And she admits that she did this because of a *personal grievance*. Hanna was not admitted to U of M and is now attending law school out-of-state to obtain her J.D.. This conduct was cruel and morally and legally reprehensible, and amounted to more than just an ethical violation. It likely constitutes defamation under M.C.A. § 27-1-801, and might well qualify for punitive damages under M.C.A. § 27-1-221, as intentional and malicious conduct in a civil tort action for defamation.

Finally, Harada admits that she employed a “nanny, babysitter and/or office worker” and failed to properly report to appropriate federal and state agencies. She further admits that she denied that employment while under oath, in a deposition in this case. Again, these are more serious than just admissions of ethical violations. They are admissions of violations of Federal and State wage law and Workers’ Compensation law, and admissions of perjury in a deposition conducted by the Commission’s own investigator, into allegations of misconduct by a sitting judge who is represented by a retired judge. Harada’s supposed “advice of accountant” defense, as reflected in the letter from her accountant, at best applies to Hanna’s work as a nanny and babysitter, but does not even purport to address Harada’s failure to report and her perjury concerning Hanna’s proven employment as an office worker (Exs. 6, 13). Harada has of-

ferred no other defense to those allegations, because there is no defense. She must be held accountable for those violations of law and perjury.

Public censure is simply not a sufficient penalty for Harada's many *admitted* violations involving numerous ethical lapses, violations of state and federal law, perjury, and defamation. A judge whose office was attained by a pattern of unethical conduct and who lies under oath to the Commission's investigator without any good reason for believing her testimony to be true does not have the integrity the public expects and deserves. A judge who satisfies a personal grievance by making false statements about a young person to a law school to prevent her from achieving her professional goals does not have the moral compass necessary to be a judge. And a judge who, as an experienced attorney, violates Federal and State wage laws and Workers' Compensation laws with regard to her office employee, then lies about it under oath to the Commission, does not have the integrity or character the public expects and deserves in a judge.

If despite everything, this Court does not believe that removal is warranted, then at a minimum, this Court should impose at least a suspension of sufficient duration to communicate to Harada and the public at large that this kind of conduct will not be tolerated. There will be "no holds barred" in future judicial campaigns if Harada's unethical, illegal, and tortious conduct is endorsed and essentially rewarded by imposition of only a censure, the minimum sanction required by law under *French* for one endorsement-related violation, while permitting her to retain the fruits of her conduct and continue in a position of trust as a judge.

If this Court is concerned that a suspension would unduly impair the efficient operation of the 13th Judicial District Court, may I encourage you to reach out to the other Judges in that District, including Complainant Judge Greg Todd. It is common knowledge in the Yellowstone County legal community that Harada's presence on the bench has led to a stifled, tense, gloomy atmosphere in the Courthouse. She has reportedly instructed her law clerks not to interact with certain other Judges and law clerks, and has otherwise interfered in the efficient operation of the Court.

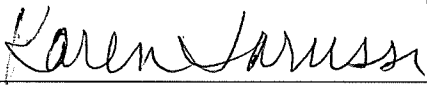
Given that Harada is "bumped" from cases at a higher rate than other Judges in the District (Ex. 12), it may be that her reduced case load could and would be absorbed by other Judges without undue burden. In any event, concerns about the impact of a suspension on parties or on the other judges in the District "fails to protect the public from further misconduct" and compromises transparency in this process "by removing from public observation, to some extent, the judiciary's response to the misconduct." *Inquiry Concerning Complaint of Judicial Standards Commission of the State of Montana v. Judge G. Todd Baugh*, 214 MT 149, ¶54. (McKinnon, J, dissenting).

V. Conclusion

The public and the legal community in Billings and elsewhere are aware of Harada's unethical conduct and depend upon this process to hold her accountable, in a way that is proportionate to the violations. Public confidence in the integrity of future elections and of the judiciary will be called into question if Harada is given only a public censure, in response to her admitted, numerous, serious ethical violations and her violation of State and Federal wage laws and Workers' Compensation laws, defamation, and perjury.

The undersigned respectfully requests that this Court go beyond the minimal recommendation of the Commission for a public censure, and remove Harada from office, as it is permitted to do under § 3-1-1107, M.C.A.. At the least, Harada should be suspended from office for a significant time period. No lesser sanction will maintain public trust in the electoral process, the judiciary, and the self-policing function of the Judicial Standards Commission.

Respectfully submitted this 15th day of March, 2020.



Karen Jarussi
Complainant