

IN THE SUPREME COURT OF THE STATE OF MONTANA

Inquiry Concerning	)	
COMPLAINTS OF	)	
ELIZABETH HALVERSON,	)	
JACQUELYN HUGHES, KAREN	)	
JARUSSI, AND HON. GREG TODD,	)	PR 20-0072
	)	
Complainants,	)	OBJECTION
	)	to Disposition and
v.	)	Recommendation for
	)	Public Censure
HON. ASHLEY HARADA,	)	
District Court Judge,	)	<i>and</i>
	)	Request to be Heard
Respondent.	)	by the Court

COMES NOW the Complainant Elizabeth Halverson and objects to the Judicial Standards Commission's Disposition and Recommendation in this matter, upon the bases stated below.

Judge Harada has admitted violations of CJC Rules 1.2 and 2.7, and multiple violations under Rules 4.1(A)(1), 4.1(A)(3), 4.1(A)(7), and Rule 4.1(A)(10).

Her admissions "... serve[s] as conclusive evidence, in light of the averments in the Formal Complaint, that [s]he failed to 'act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary' and failed to 'avoid... the appearance of impropriety.' Mont. Code Jud. Conduct R. 1.2." *Inquiry Concerning Complaint of Judicial Standards Commission of the State of Montana v. Judge G. Todd Baugh*, 214 MT 149, ¶33. (McKinnon, J, dissenting).

Legal Standards

This Court reviews the record of disciplinary proceedings to “make such determination as it finds just and proper...” including censure, suspension, removal, or retirement of the judicial officer, or rejection of the JSC’s recommendation. *Sec. 3-1-1107 M.C.A.*

Whether discipline should be imposed 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 upon the judicial system or others.

Mont. Code. Jud. Conduct, Scope, ¶6.

An “independent, fair, and impartial judiciary is indispensable to our system of justice.” *Preamble to the Code of Judicial Conduct. (CJC).* In furtherance of judicial independence, Montana has established nonpartisan judicial elections.

Political party endorsements of judicial candidates are among the most serious threats to our independent judiciary. *French v. Jones*, 876 F.3d 1228 (9th Cir. 2017), *cert. denied*, ---U.S. ---, 138 S.Ct. 1598 (2018).

Political party endorsements in particular threaten actual and perceived judicial impartiality, and threaten a structurally independent judiciary.

“.... **[T]here is no liberty**, if the power of judging be not separated from the legislative and executive powers.” *Id*, 1237-1238. ... Dependence on an endorsing political party brings into question whether a judge will be able to independently interpret and review a given piece of legislation and thus **goes to the core of the separation of powers.**” *Id*, 1239. *Emphasis supplied.*

French is controlling law.

It was the law of the land when Harada filed for office in March, 2018.

Application of the CJC Factors

Factors for consideration are found in the Montana CJC, Scope, ¶6. Applied here, the factors establish that Harada's misconduct warrants removal from office.

1. Harada's admitted transgressions are extremely serious and the circumstances are aggravated

Here is the Rule prohibiting political endorsements:

Rule 4.1 – Political and Campaign Activities of Judges and Judicial Candidates in General

A judicial candidate "(A)... **shall not ... (7) seek, accept, or use endorsements from a political organization...**

[and]

"(B)... shall take reasonable measures to ensure that other persons do not undertake, on behalf of the ... judicial candidate, any activities prohibited under paragraph (A).

As *French* confirmed in Dec. 2017, Montana's endorsement prohibition protects our independent judiciary, the separation of powers, and actual and perceived judicial impartiality.

Those are among the most serious purposes of our Code of Judicial Conduct.

Harada is charged with knowledge of the Code of Judicial Conduct, and the law including *French*. Both are crystal clear. She acknowledged her ethical duty and the endorsement prohibition to me in person on Oct. 4, 2018. *See Exh A, Complaint of E. Halverson to the JSC.*

Harada's repetitive violations were committed over the course of 4 ½ months – the entire general campaign. She made a prohibited political donation, broke Rules against making endorsements herself, misstated her own legal experience to the voting public, and more.

Once she won election – actually, within six weeks of being sworn in as a District Court Judge -- Harada admitted to the JSC the facts of the political party endorsements. She now styles all of her ethical violations as mere "mistakes". *Billings Gazette* on March 15, 2020. *See Exh B, Billings Gazette "Judge admits to misconduct," Article.*

It is apparent that Harada herself viewed the political party endorsement as highly valuable and beneficial to her campaign, so much so that she would risk this Court's discipline.

That cynical calculus must not stand as a successful strategy. Judicial officers and candidates must not be emboldened to act unethically or even illegally, with indifference to the Commission's or this Court's likely punishment for even multiple admitted violations.

The JSC Rules authorized removal from office in Rule 9 (c)(6): "*Removal*: A decision by the Supreme Court **to remove a judge from office for serious misconduct.**" Removal is warranted.

The JSC's Disposition and Recommendation for Discipline reference "mitigating factors". Such factors are not described.

2. Harada's misconduct constitutes a sustained pattern of misconduct

Harada's violations are not isolated incidents. She admittedly engaged in an onslaught of misconduct spanning the general campaign in 2018, prior dates, and dates in 2019 (when she was deposed in this matter).

The volume of her violations is substantial. The Complaints identify multiple other violations that were not charged; the formal Counts alone identify at least ten (10) violations, all now admitted.

3. The effect of the improper activity upon the judicial system or others is highly damaging

French describes the damage in Harada's admitted improper activity.

Those who seek the public trust as judicial officers must never perceive that the JSC or this Court will allow them:

- To accept and use party endorsements throughout the campaign
- To try to chill and intimidate persons who question such partisan tactics, and deter complaints with an attitude that this Court will respond with a slap on the hand

- To assume office after a “win at any cost” campaign
- To admit multiple Counts and sustained misconduct of the most serious nature, and consent to the *least* possible consequence of public censure
- **To continue to hold the office attained by means of admitted, extreme misconduct**

4. Harada’s admissions, the record, and the CJC factors warrant removal from office

“A fundamental premise of the rule of law is that equivalent misconduct should be treated equivalently.” *Baugh*, at ¶39.

Judge Baugh’s misconduct related to a single case. He admitted violating Rule 1.2. Part of his misconduct (a wrong sentence) was remedied on appeal. This Court administered a public censure plus a 30-day suspension. Baugh had already announced his retirement.

Aside from Harada and Baugh, the *Billings Gazette* reports just two (2) other District Court Judges have faced formal complaints since 1990. Judge Obert was accused of improper use of his position. The JSC recommended removal. Obert didn’t file for re-election and his term ended “within a week of the court’s order.” *See Exh C, Billings Gazette “8 Montana judges have faced misconduct complaints since 1990”, Article*. Judge Langton was given a public reprimand in 2005 after a DUI arrest. *Exh. C*.

Any one of Harada’s violations, standing alone, warrants the same discipline imposed on Baugh. Her misconduct spanned many months. Her violations are serious, numerous, and part of a demonstrated and admitted pattern of actual impropriety if not illegality. No appeal remedy exists. Harada’s violations number far more than those of Obert, Langton, and Baugh combined.

Harada’s misconduct is grave. It does damage to the integrity of the judiciary and judicial system. For example, she admits making misstatements under oath in this JSC proceeding. Every day members of the public appear before her as witnesses, criminal defendants, parents whose

children are at risk, even prospective jurors. All must swear to tell the truth. All are subject to penalties for perjury. Yet Harada argues for the lightest possible consequence from this Court.

Harada's removal as a judicial officer is abundantly warranted.

Such sanction will have a deterrent effect, it will work to protect the public and restore public confidence in the independence of our judiciary, and it will foster judicial integrity.

Request to be Heard

The undersigned respectfully requests to be heard by the Court during any public proceeding in this matter including a censure, suspension, or removal proceeding and prior to such discipline being administered.

RESPECTFULLY SUBMITTED this 15th day of March, 2020.

ELIZABETH A. HALVERSON P.C.

By: 

Exhibits:

- A: Complaint of E. Halverson to the JSC
- B: Mar. 15, 2020 Billings Gazette article, "Judge admits to misconduct"
- C: Mar. 15, 2010 Billings Gazette article, "8 Montana judges have faced misconduct complaints since 1990"

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of March 2020, a copy of the foregoing document was served on the following people by means of the electronic filing system:

Russell Fagg
The Judicial Standards Commission

A copy of the foregoing document was provided via email to:

Complainant Jacqueline Hughes
Complainant Karen Jarussi
Complainant Honorable Gregory R. Todd

ELIZABETH A. HALVERSON P.C.

By: /sig/