



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

September 6, 2011

CITIZENS FOR JUDICIAL EXCELLENCE
ATTN TED BARR, PRESIDENT
603 STEWART ST STE 819
SEATTLE WA 98191

Subject: Complaint Filed by James Tupper - PDC Case No. 11-026

Dear Mr. Barr:

With the concurrence of the Chair of the Public Disclosure Commission, I have dismissed the complaint filed by James Tupper against Citizens for Judicial Excellence (CJE), initially received on September 28, 2010 and amended and supplemented on October 12, 2010, October 16, 2010, and October 20, 2010. In his complaint, Mr. Tupper alleged that CJE consulted with the campaign of Ed McKenna in a manner that made expenditures incurred by CJE in support of Mr. McKenna over-limit in-kind contributions to the McKenna campaign, alleged violations of RCW 42.17.645. Enclosed is a copy of the complaint, the October 12, 2010 amended complaint, and the dismissal letter sent to the complainant.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828, or by email at phil.stutzman@pdcc.wa.gov.

Sincerely,

Doug Ellis
Interim Executive Director

Enclosures (2)



STATE OF WASHINGTON

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September 6, 2011

JAMES TUPPER
2025 FIRST AVE SUITE 1100
SEATTLE WA 98121

Subject: Complaint filed against Citizens for Judicial Excellence, PDC Case No.11-026

Dear Mr. Tupper:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint against Citizens for Judicial Excellence (CJE) received on September 28, 2010 and amended and supplemented on October 12, 2010, October 16, 2010, and October 20, 2010. In your complaint, you alleged that contacts between CJE staff member Mary Ann Ottinger and the 2010 Ed McKenna campaign for Seattle Municipal Court Judge constituted in-kind contributions from CJE, because Ms. Ottinger allegedly acted as a political consultant for Mr. McKenna, and was paid by CJE for her services. In addition, you alleged that Ms. Ottinger's association with the McKenna campaign compromised the independence of prospective Independent Expenditure political advertising or Electioneering Communications that CJE hoped to sponsor in support of Mr. McKenna or in opposition to his opponent, incumbent Seattle Municipal Court Judge Edsonya Charles.

PDC staff reviewed your allegations in light of the following statutes:

RCW 42.17.020(15) defines a "contribution" to include "anything of value, including personal and professional services for less than full consideration," and expenditures "made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents[.]"

WAC 390-05-210 states that an expenditure is presumed to meet the statutory definition of "contribution" under certain circumstances, including when "[a]ny arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents," when "[a]n expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the

candidate, the candidate's authorized committee or agent with a view toward having an expenditure made," or when "[a]n expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee[.]"

RCW 42.17.020(28) defines an "independent expenditure" as an expenditure that meets certain criteria, including that it "is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office[.]"

RCW 42.17.645 limits contributions to candidates to judicial office to \$1,600 per election.

PDC staff reviewed your complaint, including amendments and supplements to your complaint, and the numerous enclosed exhibits. Staff reviewed reports and data filed by Citizens for Judicial Excellence and by the Ed McKenna campaign. Staff spoke with Mr. McKenna, and reviewed declarations signed by Mr. McKenna, his campaign consultant, and CJE staff member Mary Ann Ottinger. Finally, staff reviewed the formal response by CJE to your complaint. As a result of our review, we found:

- As of the date of your original and amended and supplemented complaints, Citizens for Judicial Excellence had conducted no expenditures in support of the Ed McKenna campaign other than the committee's direct \$1,600 contribution to Mr. McKenna, made on June 21, 2010. The committee's other expenses in support of Mr. McKenna or in opposition to Edsonya Charles, a direct mail piece and an automated call, were conducted in the final week of October 2010. These expenses were timely disclosed on C-6 filings received on October 26, 2010 and October 29, 2010.
- Evidence enclosed with your complaint of contacts between Mary Ann Ottinger and the McKenna campaign from June 23, 2010 through July 16, 2010 did not show discussion of potential expenditures by CJE in support of Mr. McKenna or in opposition to Edsonya Charles. The evidence, and the response by CJE to your complaint, indicates that Ms. Ottinger took pains to avoid discussing such topics with the candidate and his campaign staff and consultants. Similarly, Ms. Ottinger made it clear to the McKenna campaign that due to her role with CJE, she could not receive any information about Mr. McKenna's campaign plans, projects or needs.

James Tupper

Complaint against Citizens for Judicial Excellence - PDC Case #11-026

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- In supporting numerous candidates in 2010 races for municipal and district court, CJE was acutely concerned with the viability of their supported candidates. The evidence indicates that it was Mary Ann Ottinger's role to screen candidates, to assess their viability and suitability for support by CJE, and to monitor their progress in raising funds and obtaining key endorsements and favorable ratings from Bar associations and other organizations. It was solely this work that earned Ms. Ottinger compensation from CJE. No evidence supported your allegation that Mary Ann Ottinger is a professional political consultant, or that she was treated as such by the McKenna campaign. Staff found that political consulting work for Mr. McKenna's campaign was performed by Beth Lindsey and Northwest Passage Consulting.

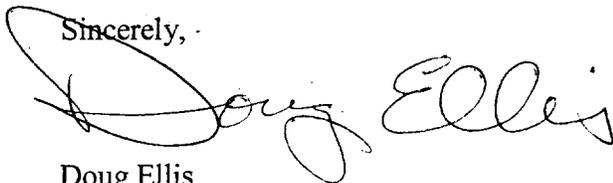
The evidence reviewed by PDC staff indicates that Citizens for Judicial Excellence desired and acted to maintain the independence of its expenditures in support of Ed McKenna and other judicial candidates in the 2010 election. PDC staff found no evidence that the committee's two expenditures in support of Mr. McKenna or in opposition to his opponent were contributions as defined in RCW 42.17.020(15) or WAC 390-05-210. Rather, the expenditures were Independent Expenditures or Electioneering Communications, and were timely reported as such by CJE. Finally, we found no evidence that Mary Ann Ottinger acted as an officer or political consultant to the Ed McKenna campaign, or that her contacts with and recommendations to the campaign constituted "personal or professional services for less than full consideration," or otherwise met the definition of "contribution" in statute or rule.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Citizens for Judicial Excellence.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of the Public Disclosure Law and better public disclosure of important campaign information.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll-free at 1-877-601-2828 or by e-mail at phil.stutzman@pdc.wa.gov.

Sincerely,



Doug Ellis
Interim Executive Director

c. Ted Barr, Citizens for Judicial Excellence