

Legislative Ethics Board

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451 JOHN A. CHERBERG BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
FAX: 360-786-1553
www.leg.wa.gov/leb

KEITH BUCHHOLZ - COUNSEL
Keith.Buchholz@leg.wa.gov

COMPLAINT 2016 – Nos. 10, 11 and 12 In Re Angel, Young and Caldier November 1, 2016

DETERMINATION OF NO REASONABLE CAUSE and ORDER OF DISMISSAL

I. Nature of the Complaint

The complaints were filed by William Scheidler, a candidate for the legislature in the 2016 election season. Mr. Scheidler's complaints are based upon a series of events beginning with his loss of a civil case, and the trial court's treatment of his claims, initially and after an appeal. No legislators or legislative staff appear to have had any direct or indirect connection to the civil case, nor to the subsequent judicial claims filed by Mr. Scheidler.

II. Background

Complaint 2016 – Nos. 10, 11 and 12 were received in September 2016. Mr. Scheidler filed individual complaints against each of the three legislators, along with a detailed report titled "Grievance."

This summary below is based upon Mr. Scheidler's allegations filed with the Legislative Ethics Board ("Board"):

In 1998, Mr. Scheidler hired Scott Ellerby, a private attorney, to represent Mr. Scheidler before the Board of Tax Appeals. Shortly before the administrative hearing, Mr. Ellerby withdrew from his representation of Mr. Scheidler.

Mr. Scheidler filed a grievance with the Washington State Bar Association against Mr. Ellerby. After the grievance was dismissed, Mr. Scheidler sued Mr. Ellerby in Kitsap County Superior Court. His claim was dismissed, with a sanction of \$120,000 assessed against Mr. Scheidler; Mr. Scheidler appealed.

Mr. Scheidler's appeal was at least partly successful; the claim was remanded to the trial court. (No link to the court's opinion was provided.)

Judge Kevin Hull was assigned the case on remand. He appears to have re-imposed the sanctions assessed by the initial judge. Mr. Scheidler objected to Judge Hull's participation in the case and his ruling. Mr. Scheidler attempted unsuccessfully to appeal the court's ruling.

The litigation includes five superior court claims, five appeals to Division II, and seven attempted appeals to the Washington State Supreme Court. Additional undescribed claims are cited against the Washington Attorney General and the Kitsap Sun (newspaper).

Mr. Scheidler lists numerous persons, mostly attorneys, who have had some connection with his claims. None are legislators or legislative staff.

Mr. Scheidler alleges that he brought his objections regarding Judge Hull (and the listed persons in his Greivance), to Sen. Angel, Rep. Young, and Rep. Caldier, and that they have not acted in a manner consistent with Mr. Scheidler's requests.

III. Jurisdiction

The Board has personal jurisdiction over Sen. Angel, Rep. Young and Rep. Caldier. It does not have personal jurisdiction over Judge Hull. It does not have subject matter jurisdiction over the claims alleged by Mr. Scheidler. RCW 42.52.320.

IV. Allegations

1. The following claims are made against Sen. Angel, Rep. Young and Rep. Caldier:
 - a. They should know "that Washington State Bar Associates have commandeered the judicial branch, occupy legislative offices, executive office, sit on government boards and committees and hold other decision making office so as to steal from citizens, cover-up crimes and deny due process rights...."
 - b. They "should know citizens are powerless against the Washington State Bar and its Associates who use their government offices to enrich themselves, their colleagues and friends."
 - c. They "should have a heightened level of concern of the dangers in such broad and uncheck power Bar Associates wield over Washington citizens."

- d. They “have violated their primary obligations prescribed by Article 1, Sec 1 by unilaterally refusing to address the unchecked power of the Bar and its oppressive ‘policies, practices, customs, claimed powers and schemes’ inflicted upon citizens of the 26th District, particularly Scheidler.” (Art. 1, Sect. 1 states, “All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.”)
 - e. They “have violated their primary obligations prescribed by Article 1, Sec 1, and particularly Article 2, Section 28(12), by unilaterally refusing to address the unlawful conduct of defendant Kevin Hull.” (Art. 2, Sect. 28 (12) prohibits the legislature from “Legalizing, except as against the state, the unauthorized or invalid act of any officer.”)
 - f. They “willfully and maliciously ignored Scheidler’s pleas for protection against the unauthorized and invalid acts by Kevin Hull.”
2. The following claim is made only against Rep. Young: he “began ignoring and returning Scheidler’s emails as ‘SPAM’ after promising Scheidler, in Young’s 2014 campaign, to address judicial corruption.”
 3. Additional general claims of negligence and corruption are levied against the judicial branch, the legislature, the Washington State Bar Association, and numerous named attorneys and judges.
 4. On October 11, 2016, the Board met and took public comment. Mr. Scheidler addressed the Board and was informed that he could not comment on pending complaints. Mr. Scheidler produced a 15-page document that contained two allegations that the ethics act was violated. He cites:
 - a. RCW 42.52.070: “...no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.”
 - b. RCW 42.52.160: “No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.”

V. Jurisdiction of the Legislative Ethics Board

The current structure and composition of the Board was established in 1994. Its jurisdiction was limited by the legislature: the Board “shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.” RCW 42.52.320. The term “this chapter” refers to Chapter 42.52 RCW, the Ethics in Public Service Act (the “Act”).

The Act generally focuses on those areas in which a legislator or legislative employee could encounter an ethical problem due to action by that person. In this sense, the Act serves as an impediment to action by legislators and staff, by creating limits on tasks that may be requested of them. The substantive areas addressed by the Act are:

- Conflicts of interest (RCW 42.52.020, .030, .040)
- Handling confidential information (RCW 42.52.050)
- Avoiding special privileges (RCW 42.52.070)
- Employment after public service (RCW 42.52.080)
- Limits on compensation (RCW 42.52.110, .120, .130)
- Limits on Gifts (RCW 42.52.150)
- Using resources for private gain (RCW 42.52.160)
- Gifts to state employees (RCW 42.52.170)
- Use of public resources in campaigns (RCW 42.52.180)
- Limits on mailings (RCW 42.52.185)
- Limits on investments (RCW 42.52.190)

In 2005, the Board determined that it did not have jurisdiction under the Act to consider a complaint alleging that a legislator failed to take action as requested by a constituent. Complaint 2005 – No. 3 (In Re Green). In Green, the complainant cited portions of the Washington State Constitution, the Constitution of the United States, and RCW 44.04.015 and RCW 42.52.900. Recognizing that the claims – regardless of their merit – fell outside the scope of Chapter 42.52 RCW, the Board dismissed the complaint.

In his final submission to the Board, Mr. Scheidler cited two provisions of the Act (.070 and .160) over which the Board has subject matter jurisdiction. However, both RCW 42.52.070 and .160 govern only affirmative actions by legislators. The complaint implies that by not taking action, those provisions were violated. Mr. Scheidler relies on the doctrine of legislative acquiescence as the basis for his complaint, a doctrine applicable to cases involving statutory construction.

VI. Determination of Reasonable Cause

No reasonable cause exists to believe the Ethics in Public Service Act was violated. RCW 42.52.320 establishes the jurisdiction of the Legislative Ethics Board. In pertinent part it reads:

(1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

The Ethics in Public Service Act does not address constitutional or other allegations that a legislator is unresponsive to constituents. Complaint 2005 – No. 3 (Green).

RCW 42.52.070 and .160 establish limits on certain actions by legislators and their employees, prohibiting them from using their positions to improperly benefit themselves or others. Those statutes do not create an affirmative duty for legislators to act under the circumstances presented by this Complaint.

Both statutes prohibit certain forms of action: in .070, “no state officer may use his or her position” to secure special privileges; in .160, “No state officer may employ or use any person, money or property” for private gain. Neither statute creates an obligation to act; both statutes establish limits on actions by legislators. To interpret those provisions in a manner that requires legislators to act would deprive legislators of the power to exercise the judgment with which they have been entrusted.

VII. ORDER

IT IS HEREBY ORDERED that Complaint 2016 – Nos. 10, 11, and 12 are dismissed.

/s/ Kenny Pittman, Chair

Date: 11/1/2016