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October 12, 2010

Fair Campaign Practices Committee  
King County Bar Association  
1200 Fifth Avenue, Suite 600  
Seattle, Washington 98101

RE: Complaint and Request for Investigation  
Edsonya Charles Campaign

Dear Committee Members:

Judge Edsonya Charles and her campaign committee member James Tupper have engaged in campaign conduct in violation of the Canons of Judicial Conduct, the King County Bar Association Campaign Guidelines and the Fair Campaign Practices Act (WAC 390-32-101) and have engaged in conduct directly contrary to the State Supreme Court's holding in In re Kaiser. I am requesting an investigation be conducted by the King County Bar Association and appropriate sanctions be imposed.

Background

I, Ed McKenna, am a candidate for Seattle Municipal Court Position 1. Edsonya Charles is the incumbent judge and a candidate for Seattle Municipal Court Position 1. James Tupper is an attorney (WSBA #16873), endorser, supporter and financial contributor to the campaign of Edsonya Charles, and member of her campaign committee. Citizens for Judicial Excellence (CJE) is a political action committee, whose members are primarily attorneys.

- A. On September 21, 2010, The Stranger published an article related to the current campaign for Seattle Municipal Court Position 1. James Tupper is quoted as referencing CJE and stating:

*“They make a living defending people accused of driving under the influence of alcohol and other substances. And what they apparently want is a bench that will kowtow to them.”*

Tupper is further quoted as stating:

*“This sends a terrible message ...If judges don’t treat the private drunk driver defense bar with kid gloves, their jobs are at risk.”*

James Tupper is further quoted as alleging the recent 2010 King County Bar Association Judicial Evaluation Survey, wherein Judge Charles received the lowest overall score, was compromised by the same attorneys:

*“It looks like [CJE] manipulated it by orchestrating responses”* from its members.

- B. On September 27, 2010, Judge Charles attended a candidate forum at the Horizon House in Seattle. In her candidate statement to the audience, Judge Charles made statements against her opponent, Ed McKenna, using words to the effect:

*“He’s supported by DUI attorneys.”*

On October 5, 2010, a press conference was held by supporters of Edsonya Charles with James Tupper as the spokesperson. The press conference was attended by several members of the local media. At that meeting, a letter entitled “AN OPEN LETTER TO KING COUNTY ATTORNEYS” was distributed to members of the media. The letter implies that CJE has engaged in improper activities and calls upon the opponent [Ed McKenna] to return campaign contributions, continuing to imply the contributions were made for an improper purpose. The letter contains the following statements:

*“Judge Edsonya Charles makes thoughtful, informed, and independent decisions, free from the influence of any special interests. And, as media reports have recently revealed, it is for this very reason that Judge Charles now finds herself the target of an orchestrated attack, as she seeks re-election – an attack with such dangerous consequences we are compelled to take a stand and speak out.”*

*“The political action committee going after Judge Charles is made up of a handful of private attorneys who specialize in defending drunk drivers. They are targeting Judge Charles because of the very principles that make her an effective leader and a great judge. Rather than respecting Judge Charles’ refusal to grant special privileges or bend the rules, these attorneys have decided to go on the attack by recruiting someone to run against her – a campaign they helped launch and continue to fund.”*

*“We can’t afford to allow any special interest group to hijack our justice system – and that’s exactly what these lawyers are trying to do.”*

*“By going after Judge Charles, they are....setting a dangerous precedent that threatens the integrity of our entire justice system.”*

*“If we let this group succeed today, the message to every judge facing an election down the road will be unmistakable: Either play the game our way, or you’ll be our next target.”*

*“Let’s protect the integrity of our profession and of our court system by sending a message to anyone attempting to buy judicial favor: Our justice system is not for sale.”*

The letter provides additional statements designed to undermine the public confidence in the judicial system:

*“hijack our justice system”*

*“dangerous precedent”*

*“threatens the integrity of our entire justice system”*

*“our justice system is not for sale”*

The letter ends with a list of 16 attorney authors, including James Tupper.

- C. On October 5, 2010, The Stranger posted an article covering the news conference. The article falsely implies, with quoted statements of James Tupper, that Ed McKenna solicited endorsement and financial contributions from CJE. James Tupper further questioned the legitimacy of the 2010 King County Bar Association Judicial Evaluation Survey, stating:

*“We are asking Ed McKenna return [CJE’s] contributions and renounce their support, and that CJE cease and desist their involvement in this race.”*

The article further quotes James Tupper as stating that CJE members had conspired to manipulate the result:

*“That survey is tantamount to an internet poll ...it can be easily manipulated. Elements of it are demonstrably false.”*

When asked whether DUI defense attorneys were behind an effort to manipulate the Judicial Evaluation Survey, Tupper is quoted as saying:

*“Sure, absolutely ...what would be so difficult about that?”*

- D. On October 5, 2010, King5.com posted an on-line article after speaking to Judge Charles. The article states in part:

*“Seattle Municipal Judge Edsonya Charles says those attorneys support her opponent for Seattle Municipal Court because Charles is tough on drunk drivers.”*

- E. On October 6, 2010, the Seattle Times published an article entitled “Presiding judge of Seattle Municipal Court targeted for defeat.” The article identifies James Tupper as a member of Judge Charles’s campaign committee. Both Charles and Tupper are quoted in the article:

*“Charles’ supporters ...question whether McKenna would be able to make fair judgments in the courtroom after getting so much support from attorneys who would appear before him.”*

*“The DUI attorneys are engaged in ‘character assassination,’ said attorney James Tupper, who sits on Charles’ campaign committee.”*

*“Charles said the DUI attorneys who oppose her think she is too hard on their clients.”*

*“Charles called the PAC’s involvement in the race ‘a threat to the justice system. It’s an organizational and systemic effort really to control the system in a way that I think is inappropriate,’ she said, adding that she is a fair judge and not ‘ beholden to special interests.’”*

The article further discusses the 2010 King County Bar Association Judicial Evaluation Survey as having been manipulated in a conspiracy by those who oppose her. Judge Charles is further quoted:

*“Charles dismisses the survey as an “internet poll” with low turnout. She said the DUI attorneys who politically oppose her influenced the timing of the poll so they would have an advantage in responding to it”.*

*The attorneys “made up a story about me” she said and then viewed me through a lens to make it true”*

- F. Judge Charles maintains a facebook page for her campaign. Her page contains headings and links to the above-stated articles. The page provides further headings with statements such as:

*“DUI attorneys are spending money to influence the election. Read about it here. . .”*

*“More ...on CJE’s (DUI attorneys PAC) shady dealing with Edsonya’s opponent, Ed McKenna”*

*“... updates... on Judge Charles opponent and his questionable dealings with the Citizens for Judicial Excellence, and PAC funded DUI attorneys.”*

*“Citizens for Judicial Excellence” a group funded by DUI lawyers is targeting judges they don’t like – including Judge Charles”*

The facebook page also reiterates the statement referenced in the King5.com article stating:

*“Seattle Municipal Judge Edsonya Charles says those attorneys support her opponent for Seattle Municipal Court because Charles is tough on drunk drivers.”*

#### Applicable Law and Rules of Professional Conduct

Code of Judicial Conduct (CJC) Cannon 1 provides:

*“Judges Shall Uphold the Integrity and Independence of the Judiciary.”*

CJC Cannon 2 provides:

*“Judges Should Avoid Impropriety and the Appearance of Impropriety in all Their Activities.”*

CJC Cannon 2(A) further provides Judges should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

CJC 7 provides: Judges Shall Refrain From Political Activity Inappropriate to their Judicial Office.”

CJC 7 (B)(1) provides: Candidates, including an incumbent judge, for a judicial office:

- (a) Should maintain the dignity appropriate to judicial office...
- (b) Should prohibit ...employees subject to their direction or control from doing for them what they are prohibited from doing under this cannon; ...they should not allow any other person to do for them what they are prohibited from doing under this cannon.
- (c) Should not

- (i) Make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
- (ii) Make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court;
- (iii) Knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

WAC 390-32-010, the Fair Campaign Practices Code, provides that candidates agree to the following principles:

“I shall not participate in, and I shall condemn, personal vilification, defamation, and other attacks on any opposing candidate or party which I do not believe to be truthful, provable, and relevant to my campaign.

I shall not use or authorize, and I shall condemn material relating to my campaign which falsifies, misrepresents, or distorts the facts, including but not limited to malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.”

Rule of Professional Conduct (RPC) 8.2(a) provides:

“A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications, integrity, or record of a judge, adjudicatory officer or public legal officer, or a candidate for election or appointment to a judicial office.”

RPC 8.4 provides:

“It is professional misconduct for a lawyer to: ... (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

In re Kaiser, 111 Wn. 2d 275, 759 P.2<sup>nd</sup> 392 (1988):

The State Supreme Court held that campaign statements by a judge that they are tough on a particular class of criminal defendant violates the duty established by the Code of Judicial Conduct and that statements regarding the motives of attorneys contributing to an opponent impugn the integrity of the judiciary, constituting a violation of the Code of judicial Conduct. Kaiser further holds that such statements imply that justice is for sale, and this does not promote public confidence in the judiciary.

King County Bar Association Guidelines for the Conduct of Campaigns for Judicial Office, June 2008 (KCBA Guidelines)

KCBA Guidelines II(C)(1)(a) provides:

“Any material presented by a candidate or a candidate’s campaign committee, including the candidates statement of qualifications, shall reflect the dignity and integrity of the judicial office.”

KCBA Guidelines II(C)(2) provides:

“A candidate should campaign only on the basis of facts and arguments related to the candidate’s qualifications, or the qualifications of opponents, to be capable and impartial jurists.”

### Discussion

The facts and statements contained herein are remarkably similar to those stated before the Washington State Supreme Court in the case of In re Kaiser, in which Judge Kaiser was censured for suggesting improper motives of attorneys contributing to the campaign of his opponent as well as making statements regarding being tough on a particular class of defendant. As in Kaiser, Judge Charles, through her campaign has “[S]uggested that there is something improper about attorneys contributing to a judicial campaign, when, of course, such contributions are entirely proper.” Kaiser at 282.

Judge Charles’s facebook page contains statements intended to cast her opponent in an unfavorable light by implying, without basis, that he has engaged in wrong-doing with contributors or supporters of his campaign. Judge Charles has provided links to web pages containing disparaging statements made by James Tupper, a member of her campaign committee. Judge Charles is personally responsible for ensuring such campaign materials contain statements that are not untruthful or misleading. Not only has Judge Charles posted links, she has added materials designed to cast her opponent in an unfavorable light.

Judge Charles statement that “[H]e’s supported by DUI attorneys” is a statement suggesting improper motives by supporters, and further suggesting that certain supporters are attempting to buy favorable treatment for their clients, and that if elected, Ed McKenna would not fairly and impartially apply the law.

Neither Judge Charles nor James Tupper has any basis to allege any wrongdoing of attorneys by stating or alleging a conspiracy to engage in conduct with intent to alter the results of the 2010 King County Bar Association Judicial Evaluation Survey. By doing so, they cast all attorneys in a false light and undermine the public’s confidence in the administration of justice.

Judge Charles has failed to publicly repudiate the false and reckless statements made by a member of her campaign staff. To the contrary, she has embraced those statements and has further publically disseminated false and misleading statements.

Judge Charles has failed to campaign on the basis of facts and arguments related to a candidate's qualifications, contrary to the King County Bar Associations Campaign Guidelines.

The statements quoted herein are so inflammatory in nature that they undermine public confidence in the judicial system and reflect adversely on the profession as a whole.

I respectfully request the King County Bar Association and the Fair Campaign Practices Committee initiate an investigation into the actions and statements of Judge Charles and her campaign, including members of her campaign staff. Because it appears that a pattern of improper campaign conduct will continue, I respectfully request the committee expedite an investigation into this matter.

Respectfully,

Ed McKenna