

Opinion No. 96-47
(Supplemental Order)

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Opinion Request Regarding PAUL CHRISTENSEN

This Supplemental Order addresses the results of an investigation and investigative hearings conducted by this Commission in response to a third-party request filed by "Helena Lockridge" on August 23, 1996 regarding the conduct of then Clark County Commissioner Paul Christensen. A discussion of the procedural history, factual findings, and legal analysis supporting this Supplemental Order follows.

PROCEDURAL HISTORY

1. On August 23, 1996, the Nevada Commission on Ethics received via facsimile machine an opinion request (Request No. 96-47) in the form of a letter purportedly from Helena Lockridge regarding the conduct of then Clark County Commissioner Paul Christensen.
2. On October 18, 1996, the Commission held a hearing on the merits of Request No. 96-47. Ms. Lockridge did not appear, but Mr. Christensen did appear and was represented by Frank Cremen. The Commission dismissed all of the allegations made in the request. The Commission was also presented with evidence that Ms. Lockridge was fictional. Based upon the evidence presented, the Commission approved an investigation by investigators from the Attorney General's office to determine who had submitted the letter purportedly from the fictional Ms. Lockridge. The use of an investigator from the Attorney General's office was necessitated by the Commission's extremely limited investigative budget and by the Commission's lack of personnel to conduct the investigation itself.
3. Through no fault of the investigator or the Attorney General's office, the Attorney General office's investigation was never satisfactorily completed. In the 1997 legislative session, the Commission was given an increased investigative budget, and so in the winter of 1997-1998, the Commission ordered an investigation to be completed by the Commission's contract private investigative firm, the Advantage Group.
4. On March 20, 1998, the Commission held a hearing regarding the outcome of the Advantage Group's investigation. The Commission had subpoenaed Shaughn Daily to appear as a witness because Mr. Daily would not cooperate with and provide information to the Advantage Group's investigators. Mr. Daily appeared along with his step-father, Robert Bede. As a result of Mr. Daily's testimony (the details of which will be discussed shortly), the Commission determined to seek further investigation, including the issuance of subpoenas for a subsequent hearing for Brooks Compton, Shari Compton-Smith, and Steve Smith, all people identified by Mr. Daily as people who were potentially involved with preparation of the "Helena Lockridge" letter.
5. On May 14, 1998, the Commission held a hearing at which Mr. Compton, Ms. Compton-Smith, and Mr. Smith appeared pursuant to subpoena. Testimony was taken from Mr. Daily, Mr. Compton, Ms. Compton-Smith, Mr. Smith, and Duane Isenberg, an investigator with the Advantage Group. As a result of the testimony at this hearing and the preceding hearing, the Commission determined that Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith all jointly created the "Helena Lockridge" letter. Based upon the investigation and testimony presented at this hearing and the preceding hearing, the Commission determined to impose a civil penalty of \$2,500 against Mr. Daily for his part in the creation of the "Helena Lockridge" letter. When the Commission began discussing the legal ramifications of this determination, Mr. Compton, Ms. Compton-Smith, and Mr. Smith indicated that they would like to consult with and have present legal counsel. The Commission determined not to proceed regarding the discussion and imposition of sanctions until Mr. Compton, Ms. Compton-Smith, and Mr. Smith could speak with counsel, so the Commission continued the completion of the hearing until May 27, 1998.
6. On May 27, 1998, Kenneth Frizzell, an attorney who worked for Patrick Nohrden, counsel for Mr. Compton, Ms. Compton-Smith, and Mr. Smith, appeared to seek an additional continuance of the matter because Mr. Nohrden was in Washington D.C. The Commission granted the continuance.
7. On June 24, 1998, the continued hearing resumed. At this hearing, Mr. Nohrden argued that Mr. Compton, Ms.

Compton-Smith, and Mr. Smith were not responsible for the creation of the "Helena Lockridge" letter and that they should not be penalized by the Commission. The Commission disagreed with Mr. Nohrden's arguments and concluded that Mr. Compton, Ms. Compton-Smith, and Mr. Smith should each be assessed civil penalties of \$5,000 for their roles in the creation of the "Helena Lockridge" letter.

FINDINGS OF FACT

1. In the 1996 campaign for Clark County Commissioner, the incumbent was Paul Christensen. He was challenged in the primary for his party's nomination by Brooks Compton and others. The date of the primary election was September 3, 1996.
2. Mr. Daily was a volunteer staff member of Mr. Compton's campaign.
3. On July 22, 1996, Mr. Daily filed a request for an opinion with the Commission in the form of a letter. This letter sought an opinion regarding Mr. Christensen's public representations in advertisements. This letter was transmitted via facsimile machine, and an original letter was never subsequently received. The fax header showed a number of 0/8OV03698471.
4. On August 1, 1996, Mr. Daily filed a second request for an opinion regarding Mr. Christensen, again in the form of a letter, again faxed, again without a subsequent original letter, and again with a fax header with the number 0/8OVO3698471. In addition to Mr. Christensen, the request also named as subjects Clark County Commissioners Jay Bingham and Erin Kenny. The substance of the request was an allegation that the three commissioners had a "relationship" with Kent Oram and K-T Services that should have been disclosed when a matter related to Mr. Oram came before the Clark County Commission.
5. On August 23, 1996, just eleven days before the primary election, the Commission received an opinion request in the form of a letter from Helena Lockridge (Request No. 96-47). The letter was received via facsimile machine, and an original letter was never subsequently received in the mail. Ms. Lockridge's address was shown to be P.O. Box 80326, Las Vegas, Nevada 89180, with a telephone number of 362-6694. The fax header was identical to the fax headers of Mr. Daily's two letters and showed a number of 0/8OV03698471.
6. Mr. Daily admitted to writing the two letters filed under his name. He wrote the letters at the prompting and with the assistance of Mr. Compton, Ms. Compton-Smith, and Mr. Smith. Mr. Compton admitted that he spoke with Mr. Daily regarding the first letter, and Ms. Compton-Smith said that it was highly possible that she also spoke with Mr. Daily regarding the first letter. The two letters were written on a computer maintained in Mr. Smith's printing shop. This computer was the only one used by Mr. Compton's campaign, and the only people who knew Mr. Daily had written the letters on that computer were Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith. The facsimile machine used by Mr. Daily to fax the two letters was the facsimile machine used by Mr. Compton's campaign and was also located in Mr. Smith's printing shop.
7. The similarities between the "Helena Lockridge" letter and Mr. Daily's two letters, and the inclusion of certain proprietary facts in the "Helena Lockridge" letter show that the "Helena Lockridge" letter was authored by the same people who authored Mr. Daily's two letters, namely Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith. The links between Mr. Daily's letters and the "Helena Lockridge" letter are:
 - a. The printer is identical.
 - b. The fax header is identical.
 - c. The formats of the documents are identical. Each letter has right-indented paragraphs with no indentation for the first line of the paragraphs. Each letter has an unusual 1 5/8" left margin, an equally unusual 7/8" right margin, and an equally unusual 2" top margin. Each letter lacks letterhead, and each letter has the name and address of the author under the signature. Each name under the signature begins with the formal address of "Mr." or "Ms." Each letter opens with substantially identical sentences: (1) "I would like to file (1) one complaint against Clark County District C Commissioner Paul J. Christensen." (Daily's first letter); (2)

"I wish to file one (1) ethics complaints against Clark County Commissioners, Paul J. Christensen, Jay Bingham, and Erin Kenny." (Daily's second letter); (3) "I WANT TO FILE TWO ETHICS COMPLAINTS AGAINST PAUL J. CHRISTENSEN." ('Helena Lockridge' letter).

d. Each letter contains common stylistic choices. All three letters refer to Nevada's citizenry as "taxpayers." Although Mr. Daily's second letter does not use either Mr. Bingham's or Ms. Kenny's middle initials, in all three letters Mr. Christensen is always first referred to as "Paul J. Christensen." All three letters have sentence fragments or sentences that begin with prepositions or conjunctions.

e. The P.O. Box number given for "Helena Lockridge" is actually the box number for Mr. Daily and his parents. The telephone number given for 'Helena Lockridge' is actually the Bedes' (Mr. Daily's parents) personal telephone number.

8. On September 3, 1996, the primary election was held. Mr. Christensen defeated Mr. Compton and all other of his primary challengers.

9. On October 1, 1996, at 7:23 p.m., the Commission received a letter from Mr. Daily in which he attempted to "withdraw" the "Helena Lockridge" request. At the time that Mr. Daily sent this letter to the Commission, there had been no public exposition that Ms. Lockridge was fictitious. The report of Mr. Christensen's private investigator that determined that Ms. Lockridge was fictitious was not completed or transmitted to Mr. Christensen's counsel until October 2, 1996. As best the Commission could ascertain, the press reports regarding whether Mr. Daily was involved in the "Helena Lockridge" request were after October 2, 1996. In the letter, Mr. Daily states that he knows that the "Helena Lockridge" request contained his "personal public information" and contains the following apology: "I also wish to apologize to the Ethics Commission for any inconvenience that I have caused."

10. Not only was the timing of Mr. Daily's October 1 letter highly suspicious, but the language in the letter bears many of the same stylistic traits noted in his earlier requests and the "Helena Lockridge" request. For example, in the October 1 letter, Mr. Daily again refers to Nevada's citizenry as "taxpayers." The October 1 letter also contains two sentences which begin with conjunctions or prepositions, a writing trait that seems characteristic of Mr. Daily since it is in all four of the letters at issue.

11. Mr. Daily and Mr. Smith both provided testimony that showed that Mr. Smith had personal knowledge of the "Helena Lockridge" that would indicate that Mr. Smith was involved in perpetrating the "Helena Lockridge" fiction. Mr. Daily described a UNLV basketball game to which Mr. Smith had brought some signs or placards he had made that stated: "Helena Lockridge Fan Club." Mr. Daily also testified that he had been told that Mr. Smith had threatened to reveal "the resting place" of "Helena Lockridge" in documents related to the Smiths' divorce.

ANALYSIS AND SUPPLEMENTAL ORDER

The Commission had jurisdiction over this matter pursuant to NRS 281.511(2) because Mr. Christensen was a public officer as defined in NRS 281.4365 at the time the "Helena Lockridge" request was filed. After dismissing the request against Mr. Christensen, the Commission initiated an investigation under NRS 281.465(1) to determine whether the "Helena Lockridge" request had been filed in violation of NRS 281.525 and 281.551.

NRS 281.525(1) makes it unlawful for any person "to make, use, publish or disseminate any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce the commission to render an opinion or to take any action related to the rendering of an opinion." NRS 281.511(2) as it was in effect at the time the "Helena Lockridge" request was filed allowed this Commission to impose a civil penalty of up to \$5,000 against any person who "knowingly or maliciously submits to the commission any false accusation or false information, or submits to the commission any false accusation or false information in bad faith. . . ."

A request for an opinion from this Commission that is filed in the name of a fictitious and false identity knowingly, maliciously, or in bad faith violates NRS 281.511(2) and 281.525(1). The context and timing of the "Helena

Lockridge" request strongly support the conclusion that the request was intended to be malicious and harmful to Mr. Christensen's candidacy. The question in this case is not whether the "Helena Lockridge" request violated NRS 281.511(2) and 281.525(1), because clearly it does, but rather, who created and published the "Helena Lockridge" request. The evidence we gathered in our investigation and hearings in this matter showed that the people behind the "Helena Lockridge" request were Mr. Daily, Mr. Compton, Mr. Smith, and Ms. Compton-Smith.

The most compelling evidence supporting our conclusion is the "Helena Lockridge" request itself. As was discussed in Finding of Fact #7 above, it is inconceivable that the author of the "Helena Lockridge" was not also the author of Mr. Daily's first two requests. All the substantive clues align: the printer is the same, the fax machine is the same, the document formatting is the same, and the stylistic and grammatical choices and errors are the same. The mind that wrote the first two requests also wrote the "Helena Lockridge" request.

Mr. Daily testified that he wrote the first two requests collaboratively with Mr. Compton, Ms. Compton-Smith, and Mr. Smith on a computer located in one of Mr. Smith's businesses that was being used by Mr. Compton as a campaign headquarters. According to Mr. Daily, the only four people who knew that Mr. Daily had written the first two requests on this computer were the four people who composed the letters. We find this much of Mr. Daily's testimony to be credible because it is congruent with the context in which the requests were created. In the course of a heated primary election campaign, requests from a person named Shaughn Daily would not be viewed as politically motivated, whereas requests from Mr. Compton or his family obviously would be.

The course of events logically leads to the conclusion that Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith authored the "Helena Lockridge" request. We know Mr. Daily authored two previous requests at the behest of and with the assistance of Mr. Compton, Ms. Compton-Smith, and Mr. Smith. We know that the "Helena Lockridge" request was submitted eleven days before the primary election. The "Helena Lockridge" request was submitted under a fictitious name by the same people who had created and submitted the two previous requests because the timing of the request would be too suspicious and troublesome if it had been submitted under the name of anyone affiliated with the Compton campaign. Even Ms. Compton-Smith acknowledged that if her name appeared on an opinion request, suspicions would be raised. Of course, if one were going to submit a fictional request, one would have to maintain the fiction at least through the election, so it is a reasonable surmise that Mr. Daily's personal information was used so that anyone seeking to reach the fictional Ms. Lockridge would actually contact one of the authors of the fiction. We know, in fact, that this Commission's responsive letter to the "Helena Lockridge" request was not returned, meaning that someone (either Mr. Daily or one of his parents) kept the letter, even though it was not addressed to any of them because it was addressed to the fictional Ms. Lockridge.

Thus, we find incredible the pile of denials of authorship amassed in this matter. Several facts belie the denials. First, the physical evidence, as has already been discussed, undoubtedly proves that the "Helena Lockridge" request was created on the same equipment by the same mind or minds that created Mr. Daily's first two letters. Second, the timing of the filing of the "Helena Lockridge" request, being only eleven days before the primary election, and its content indicate an intent to discredit Mr. Christensen. Third, Mr. Smith seemed to have an inordinate knowledge of and fascination with Ms. Lockridge as evidenced by his printing of "Helena Lockridge Fan Club" signs and bringing them to a UNLV basketball game and by his threatening to reveal the "resting place" of Ms. Lockridge.

Fourth, Mr. Daily attempted to withdraw the "Helena Lockridge" request on October 1, 1996, **before** he could have known from public sources that "Helena Lockridge" was fictional, since, as far as this Commission could ascertain, the reports by the media regarding Ms. Lockridge being fictional and Mr. Daily's involvement with Ms. Lockridge's letter did not come until after October 1, 1996. When Mr. Daily was asked to explain the bizarre timing and reason for his attempt to withdraw Ms. Lockridge's request, his answers were incredible because they shifted and changed. Because the Commission's letter to Ms. Lockridge was not returned and was mailed to Mr. Daily's address, we must conclude that Mr. Daily knew about the "Helena Lockridge" request because he and the others had written it and had received it just as planned.

Fifth, the behavior, demeanor, and credibility of Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith all indicate that their denials were incredible. Throughout this matter, all four of the people involved were elusive. Though they complained at hearing that they should have been interviewed by an investigator before their public appearances at hearing, all of them made such contact practically impossible. Furthermore, when this Commission attempted to serve subpoenas on them, only Mr. Smith was able to be personally served. Worse yet, the Commission's investigator testified that his service attempts were unsuccessful even though he had observed a

person in Ms. Compton-Smith's home who would neither answer the door nor the telephone. Furthermore, at hearing Mr. Compton and Ms. Compton-Smith both testified that they were aware that the Commission had been attempting to serve them, but their behavior in snidely informing the Commission of their beliefs that they had not been properly served does not comport with their protestations at hearing that they wanted to be cooperative with the Commission's investigation. In fact, it was clear to this Commission that Mr. Compton and Ms. Compton-Smith only appeared at hearing because of a strongly worded telephone call from this Commission's Deputy Attorney General.

At hearing, the demeanor of Mr. Compton, Ms. Compton-Smith, and Mr. Smith was confrontational, uncooperative, and openly hostile, even granting that they may have felt inconvenienced and angry as a result of the Deputy Attorney General's telephone call. Their testimony matched their demeanors, since the amount of information they could not recall far exceeded the information that they did recall. Even simple questions were met with "I don't recall" or "I don't remember." Their evasive answers and their bristly demeanors created an overwhelming impression that they were intentionally misleading this Commission and that their testimony, especially their denials, could be accorded no credibility.

Taken *in toto*, the substantial evidence developed in the investigation of this matter proves that "Helena Lockridge" was actually Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith. We will never know, because they will never tell us, precisely what roles each of the four had in the creation of the "Helena Lockridge" request, but we are certain that all four had roles in creating the request. We conclude, therefore, that Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith each violated NRS 281.525(l) by publishing and disseminating a statement that they knew and intended to be false, deceptive, and misleading in order to induce this Commission to render an opinion relating to Mr. Christensen. We further conclude that the same conduct also violated NRS 281.551(2) because it constituted the knowing and malicious submission of false information to this Commission.

There must be severe consequences for the misuse of this Commission's processes. This Commission serves Nevada's citizens in advising public officials and employees about their ethical questions and in addressing questions about public officials and employees raised by the public they serve. In doing our duty, though, we must rely upon the good faith and veracity of people who choose to use our processes. We acknowledge that this Commission's processes can be abused and misused, just as the all other legal processes can be abused and misused, and that the abuse or misuse of this Commission's processes can work mischief, harm, and damage to innocent public officials and employees. Fortunately, the Legislature provided this Commission with the ability to impose a stiff civil penalty under NRS 281.551(2) when this Commission has been misused. This matter presents the first time ever that this Commission has been misused through the device of a fictional requester, and we must respond with the maximum penalty available for such an egregious abuse of this Commission's processes.

Therefore, we impose a civil penalty of \$5,000 upon each of Mr. Compton, Ms. Compton-Smith, and Mr. Smith, and we impose a civil penalty of \$2,500 upon Mr. Daily, all under NRS 281.551(2). We impose a lesser penalty against Mr. Daily only because Mr. Daily did provide this Commission with some truthful and useful information in the furtherance of our investigation, whereas the other three people involved were only evasive, obstructive, and incredible.

CONCLUSION

Based upon the record, the Commission concludes that Mr. Daily, Mr. Compton, Ms. Compton-Smith, and Mr. Smith all created the fictitious "Helena, Lockridge" request and thereby violated NRS 281.525 and 281.551(2). For these violations, the Commission imposes a civil penalty of \$5,000 each against Mr. Compton, Ms. Compton-Smith, and Mr. Smith and a civil penalty of \$2,500 against Mr. Daily. Each person shall pay his or her penalty by cash or by cashier's check or money order made payable to "State of Nevada, Office of the Treasurer," to be received by the Commission office no later than 5:00 p.m. P.S.T. on April 30, 1999. Failure to pay the penalty shall result in such legal action as is necessary to collect the penalty.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: April 14, 1999.

NEVADA COMMISSION ON ETHICS

By: Mary E. Boetsch, Chairwoman