

File a Formal Complaint - Shane O'Rourke

Shane@buzzardlaw.com reported a day ago (Mon, 3 Oct at 8:58 AM) via Portal Meta

On numerous occasions, across multiple mediums of printed advertisement, Katherine Gulmert has violated RCW 42.17A.335(1)(b) by falsely implying incumbency for Lewis County Superior Court, Position 3. The specific instances of violations are discussed, with photographic evidence, and argument regarding actual malice and knowledge, in the attached memorandum with supporting exhibits.

10 Attachments

JPGExhibit 5.JPG (1.27 MB)	PNGExhibit 4 (2... (2.34 MB)	JPGExhibit 4 (1... (96.1 KB)
JPGExhibit 3.JPG (2.36 MB)	PNGExhibit 2 (3... (2.05 MB)	PNGExhibit 2 (2... (593 KB)
PNGExhibit 2 (1... (898 KB)	JPGExhibit 1 (2... (1000 KB)	JPGExhibit 1 (1... (1.21 MB)
PDFPDC COMPLAIN... (2.38 MB)		



Buzzard O'Rourke

a t t o r n e y s a t l a w

Serving our community since 1978

JAMES M.B. BUZZARD
SHANE M. O'ROURKE
JASON J. FUGATE
KEVIN NELSON
STEVEN R. BUZZARD, *of counsel*

314 HARRISON AVENUE
PO BOX 59
CENTRALIA, WA 98531

PHONE (360) 736-1108
FAX (360) 330-2078
buzzardlaw.com

September 28, 2016

Via E-Mail

Washington State Public Disclosure Commission
711 Capitol Way, Room 206
Olympia, WA 98504

RE: Complaint against Katherine Gulmert
Judicial Candidate for Lewis County Superior Court, Position 3

To Whom It May Concern:

Attached, please find my formal complaint against Katherine Gulmert for multiple instances of falsely implying incumbency in the judicial race for Lewis County Superior Court, Position 3. The specific laws which have been violated, along with detailed descriptions of the violations, supporting evidence, and argument, are included in the formal complaint. I am also sending you the original image files which constitute the exhibits in this case in addition to scanned copies.

I realize that you are very busy at this part of the election cycle, but I believe the advertisements in question are flagrant and clearly false, and it is my hope that you will be able to address this matter before damage is done to Joely O'Rourke's campaign so close to the election. Judicial candidates must be held to the highest standards for following simple rules and not misleading the public, and in this case the rules have not been followed and the public is being misled.

Thank you very much for your time and attention in this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Shane O'Rourke

Office Use Only: No. _____

WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION COMPLAINT FORM

Description of Complaint

1. RESPONDENT:

KATHERINE GULMERT

Attorney at Law/Judicial Candidate for Lewis County Superior Court, Position 3

1673 S. Market Blvd. #118

Chehalis, WA 98532

katherine@gulmertforjudge.com

360-880-1657

2. ALLEGED VIOLATIONS:

On numerous occasions, across multiple mediums of printed advertisement, Katherine Gulmert has violated RCW 42.17A.335(1)(b); Washington State Code of Judicial Conduct Canon 4, Rule 4.1(A)(10), Rule 4.2(A)(2); and Washington Rules of Professional Conduct Rule 8.4(c) and (m), by falsely implying incumbency for Lewis County Superior Court, Position 3. The specific instances of violations are discussed below in this section (2) of the complaint, images of said violations are contained in the evidence section (3) and a discussion of actual malice and knowledge is also contained in section (3).

A) Katherine Gulmert is placing yard signs throughout Lewis County which read as follows:

"Katherine

GULMERT

JUDGE

Lewis County Superior Court Position Three

WHEN EXPERIENCE MATTERS

Committee to Elect Katherine Gulmert"

These signs constitute a blatant attempt to imply to potential Lewis County voters that Ms. Gulmert is already a sitting judge.

- B) Katherine Gulmert has purchased and had published internet advertisements on www.lewiscountysirens.com which read as follows:

"KATHERINE GULMERT
Lewis County Superior Court
Judge, Position Three
Qualified and
willing to serve
360-880-1657
Sponsored by Committee to Elect Katherine Gulmert"

This advertisement is a blatant attempt to imply to potential Lewis County voters that Ms. Gulmert is the sitting Lewis County Superior Court Judge for Position Three.

- C) Katherine Gulmert has passed out hundreds, if not thousands, of business cards at homes, parades, public events, and other functions which read as follows:

"KATHERINE GULMERT
Lewis County Superior Court Judge
Position Number 3

There are some star logos underneath and then committee to elect language as well as contact information in small print.

These business cards are a blatant attempt to imply to potential Lewis County voters that Ms. Gulmert is already an incumbent judge. The card essentially looks like a business card that any holder of an office, profession, or other title would hand out.

- D) Katherine Gulmert has produced and used a vehicle magnet as a mobile form of advertisement which reads as follows:

"KATHERINE GULMERT
Lewis County Superior Court Judge
Position Number Three"

The magnet also contains committee to elect language, contact information, and website information.

This magnet is a blatant attempt to imply to potential Lewis County voters that Ms. Gulmert is the sitting Lewis County Superior Court Judge for Position Three.

3. EVIDENCE

- A) See attached Exhibit 1 which is a zoomed in picture of Ms. Gulmert's yard sign in Chehalis, Washington and a picture of another such yard sign in Centralia, Washington. As the pictures show, Ms. Gulmert's yard sign contains the language described in section 2 above.
- B) See attached Exhibit 2 which is a series of pictures of Ms. Gulmert's internet advertisements. As the pictures show, Ms. Gulmert's advertisements contain the language described in section 2 above.
- C) See attached Exhibit 3 which is a picture of Ms. Gulmert's campaign business card. As the picture shows, Ms. Gulmert's campaign business card contains the language described in section 2 above.
- D) See attached Exhibit 4 which is a picture of Ms. Gulmert's vehicle magnet. As the picture shows, Ms. Gulmert's vehicle magnet contains the language described in section 2 above.

RELEVANT LAW:

RCW 42.17A.335(1)(b) makes it a violation for a candidate to act with actual malice and engage in political advertising which falsely implies that said candidate is the incumbent.

RCW 42.17A.005(1) defines "actual malice" as acting with knowledge of falsity or with reckless disregard as to truth or falsity.

RCW 42.17A.005(25) defines "incumbent" as a person who is in present possession of an elected office.

WAC 390-18-040(6) states that "stating the office sought by a candidate in a political advertisement without expressly stating the candidate is seeking election to the office (e.g. "for mayor"; "Elect Smith Mayor") represents that the candidate presently holds that office.

Washington Code of Judicial Conduct Canon 4 states "a judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the integrity of the judiciary."

Washington Code of Judicial Conduct Rule 4.1(A)(10) states that a judicial candidate shall not "knowingly, or with reckless disregard for the truth, make any false or misleading statement."

Washington Code of Judicial Conduct Rule 4.2(A)(2) states that a judicial candidate shall "comply with all applicable election [and] election campaign laws."

Washington Rules of Professional Conduct Rule 8.4 (c) states “it is a professional misconduct violation for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Washington Rules of Professional Conduct Rule 8.4 (m) states “it is a professional misconduct violation for a lawyer to violate the Code of Judicial Conduct.”

Washington PDC Advertising Guide advises candidates for office that they should not imply incumbency if they do not hold the actual office. The guide goes on to discuss that the candidate should provide some indication in political advertisement that they are seeking the office in question and provides recommended formats such as “Vote for” “Elect” etc.

ARGUMENT:

Ms. Gulmert has not merely made a mistake of accidentally omitting language on a piece of campaign literature indicating that she is not actually the incumbent and is instead seeking the office. Rather, Ms. Gulmert has engaged in an extensive and calculated effort, with continuity of purpose, across multiple mediums which have been disseminated to thousands of potential voters, to imply that she is the incumbent, a sitting judge already holding a position in Superior Court, and has the experience of a sitting judge. These efforts are flagrant, are done to attempt to harm her opponent Joely O’Rourke’s campaign. They are particularly troubling for a judicial candidate who a) should, of all potential elected officials, be extremely cognizant of the laws of Washington State, and b) should be held to the highest standards of integrity and honesty in campaigning to promote the integrity of the judiciary.

Actual Malice Former RCW 42.17A.530 (now 47.17A.335) did not contain a requirement that malice be shown when alleging a violation of that section by falsely claiming incumbency. The malice provision was added to RCW 42.17A.335 by the Legislature to make it more difficult to prove a violation and avoid violations being found in cases where simple accident or mistake had occurred.

However, while an actual malice element must now be proven, a candidate cannot simply avoid a finding of malice by summarily claiming accident or mistake in advertising, particularly when the evidence is overwhelmingly contrary to the candidate’s contention. As noted above, actual malice exists when the candidate in question acts with knowledge of falsity or with reckless disregard for the falsity of their statement.

In this case, Ms. Gulmert acted with knowledge of the falsity of her advertising, or, at a minimum, she acted with reckless disregard as to the falsity of her advertising. This is evidenced by the scope of her false advertising and continuity of purpose; the timing and surreptitious nature of the advertising; evidence of her understanding of how to legally advertise at prior stages of her campaign; and by the blatant substance of the advertisements themselves.

Scope and Continuity of Purpose Ms. Gulmert did not simply make a mistake in one piece of campaign literature or in one advertisement. Ms. Gulmert has made a calculated effort to imply to unaware Lewis County voters (as opposed to those who already know that Judge Richard Brosey presently holds the office in question) that she is the incumbent in the race. Ms. Gulmert produced a vehicle magnet, hundreds if not thousands of business cards, internet advertising, and yard signs which imply that she is the incumbent, and which don't even give the slightest indication that she is seeking to obtain the position in question.

Timing and Surreptitious Nature While Petitioner acknowledges that the PDC is likely not concerned with the state of the race or the politicking that has occurred, Petitioner believes some background information is necessary for the PDC to rule on this complaint. Ms. Gulmert worked briefly as an attorney in Lewis County for two years approximately a decade ago, and then left the county and worked in multiple other counties for the next decade. Ms. Gulmert also resided outside of Lewis County for a significant period of this time and purchased a home outside the county. Just before the filing deadline earlier this year, after Ms. O'Rourke had already announced her candidacy, Ms. Gulmert announced her candidacy. Ms. Gulmert attempted to secure numerous endorsements within Lewis County, including from judges and other elected officials, and was unsuccessful in securing such endorsements or local support, partially due to having been absent from the legal community for a decade.

Subsequently, Ms. Gulmert declared to the PDC that she would be a "mini filer" and only spend \$5,000.00 or less on her campaign, and she spent the bulk of the campaign season to date spending a minimal amount of money and time on traditional forms of advertising, such as the internet, yard signs, larger signs, print advertisement, vehicle magnets, etc. In fact, for most of the campaign season to date, Ms. Gulmert had just one large banner which she used in parades and displayed at her residence. As such, Ms. Gulmert had not yet elected to engage in the false advertising of incumbency that has now occurred and alleged herein.

However, despite not spending any significant amount of money or time on traditional forms of advertisement, Ms. Gulmert did attempt to advertise herself and create a narrative whereby she would be viewed as a "local attorney" or "Chehalis attorney" (as opposed to someone who had left for a decade only to return to run for office), and also viewed as a "continuous resident" of Lewis County (as opposed to someone who had lived outside of the county and actually purchased a home to live out of the county).

This narrative can be observed by a quick visit to Ms. Gulmert's website where she states that she "worked for the Lewis County Prosecuting Attorney's Office beginning in 2004 and has been a local resident ever since." Ms. Gulmert also closed her Cowlitz County law practice after filing for judicial office, rented a space and declared that she was a "Chehalis attorney" in the media and advertising. She then claimed in the media that she would be working with Superior Court Judge James Lawler to gain Pro Tem Commissioner experience, which was later discovered to be false in that she was actually advised that she would not be able to act as a Pro Tem Commissioner due to the Court's lack of confidence in her ability.

Ms. Gulmert's website claims multiple times that she has always been a resident of Lewis County, despite spending extended periods living outside the county. Finally, Ms. Gulmert's profile in the Secretary of State Voter Manual also omits any reference to where she held the legal positions she advertises in the manual. While this narrative is not being claimed here as a violation per se, it is evidence of the misleading nature of Ms. Gulmert's campaign.

The surreptitious nature of Ms. Gulmert's false advertising is evidenced by the manner and timing of the advertising, particularly the fact that the most aggressive and flagrant violations are occurring just weeks before ballots are mailed out, weeks before the election, and at a juncture where her opposition has little time to respond and little time for the PDC to act.

Specifically, Ms. Gulmert initially was just falsely advertising on her small business cards she has been handing out for what appears to be a long period of time and potentially includes parades and many other functions. However, because these cards are not posted or left in public, and are not included on her website, it wasn't until recently that Petitioner was able to obtain one and discover the false advertisement of incumbency. The vehicle magnet on the other hand was visible, but appeared to have minimal presence and significance, such that Ms. Gulmert's opponent, in an effort to avoid an unnecessarily contentious campaign, elected to stay the course and not report the magnet. However, now that the election is near, Ms. Gulmert has made more aggressive efforts to falsely imply incumbency by placing yard signs around the county and publishing internet ads. As noted above, now Ms. Gulmert now attempts to influence voters at a key time in the campaign, and potentially avoid scrutiny from her opposition and the PDC until after the election when the damage is already done.

Understanding of Proper Advertisement Ms. Gulmert does not simply misunderstand how a non-incumbent must legally advertise in a judicial campaign, because she has previously engaged in legal advertising where she was not falsely implying incumbency. A visit to her website and Facebook page show that there is language "for Judge" on both pages. Similarly, her one banner that she used throughout the campaign (See Exhibit 5) includes the word "Elect" featured prominently. However, now that the election is around the corner, and Ms. Gulmert has not made the progress or inroads she wanted in campaigning, she has engaged in multi-faceted and aggressive advertising which omits any such legally required language and in doing so is falsely implying incumbency.

Substance of Advertisements A picture is worth a thousand words, and in that sense, the pictures of these advertisements should speak for themselves. The simplest way a person can hold themselves out as having a title is to write their name and the title side by side or underneath without further explanation (e.g. John Doe, Attorney at Law; Jane Doe, Psychologist). On her business card and magnet, Ms. Gulmert lists her name, the position, and there is a lack of any "for" or "elect" language; but perhaps most egregious are the internet advertisement and the yard signs.

The internet advertisement prominently, and in large print, simply states "Katherine Gulmert, Lewis County Superior Court Position Three". There can be no better effort made to imply incumbency than this type of language. The addition of "qualified" underneath serves to mislead the public into believing that Ms. Gulmert has judicial experience, when in fact she does not. Similarly, the yard signs prominently list Ms. Gulmert's name, and then in large bold letters the word "JUDGE". Again, many normal citizens who are unaware of the current office holder will read this to mean exactly what it says, that Ms. Gulmert is a judge. Then, to add insult to injury, Ms. Gulmert's yard sign says "when experience matters", which clearly misleads the public into believing they should consider that a "judge" would have judicial experience, which is an effort to undermine her opponent's legally produced yard signs.

DAMAGES:

RCW 42.17A.335(4) states that when a violation of this section is proven by clear and convincing evidence, that damage is presumed and need not be proven. However, the damage is quite apparent in this case, which is the undermining of Joely O'Rourke's legally conducted campaign, and the potential for misleading voters.

REQUESTED RELIEF:

Petitioner is requesting that the PDC find that Ms. Gulmert's advertisements are in violation of RCW 42.17A.335(1)(b) and impose an appropriate sanction, including, at a minimum that she be directed to cease and desist such forms of advertising, and remove any such advertisements and signs or face further sanctions.

Certification

In signing this complaint:

- I have provided all information, documents and other evidence of which I am aware;
- If I become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- I am providing the PDC current information on how to contact me, and will promptly update that information if it changes.
- Unless otherwise noted, I agree that PDC may use email instead of U.S. mail for all written correspondence about this complaint.

E-mail address: shane@buzzardlaw.com

Your name (print or type): SHANE O'ROURKE, Campaign Committee Member of Committee to Elect Joely O'Rourke, Attorney at Law, and husband of Joely O'Rourke

Street address: 107 Nicola Ct.

City, state and zip code: Chehalis, WA 98532

Telephone number (including area code): 360-736-1108

Oath

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.*

Your signature  _____

Date signed September 28, 2016

Place signed (city and county) Centralia ~~Klickitat~~ Lewis County WA

City **County**

Attachments

I AM attaching copies of documentary evidence/extra pages in support of this complaint.

*RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

EXHIBIT 1





ELECT **Edna J. Fund**
"A Leader
Who Listens"
Lewis County Commissioner
District 20 www.ednafund.com #ednafund

Elect **Bob Bozarth**
County Commissioner
District 10

GULMERT
2008

MARTY
WELLS
LX. COMMISSIONER 010

Edna J. Fund
Lewis County Commissioner
District 20

EXHIBIT 2

✓
Joined

+
Add Members

🔍
Search

i
Info

📌 View Pinned Post



Write something...



Sharyn L. Decker

7 mins



"Chehalis: Senior citizen shopper shoots self in foot" from Tuesday September 27, 2016 at 11:40 a.m.



Chehalis: Senior citizen shopper shoots self in foot « Lewis County S...

CHEHALIS – A customer at the checkout c...

lewiscountysirens.com

1 Comment

👍 Like

💬 Comment

➦ Share



Sharyn L. Decker

Yesterday at 6:14 PM



"Former association treasurer charged with 10 felony counts"



This entry was posted on Tuesday, September 27th, 2016 at 11:40 am and is filed under [News briefs](#). You can follow any responses to this entry through the [RSS 2.0](#) feed. You can [leave a response](#), or [trackback](#) from your own site.

Leave a Reply

Name (required)

Mail (will not be published)

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Recent Comments

1. "I see nothing has changed in the last 4 years in Centralia regarding the corruption and ineptitude. So how many cases ...

Billy Orr on Appeals court gives Centralia teen a "do-over" on 90-plus-year drive-by shooting sentence

2. "Check this idiots online profile and picture on LINKEDLN. She really thought she was somebody SPECIAL! Just another skank striving ..."

Typical on Former association treasurer charged with 10 felony counts for alleged dipping into account

3. "Hmmmmmm, Drugs?, QVC addiction? Gambling? What an embarrassment for her children.... "

Don Johnson on Former association treasurer charged with 10 felony counts for alleged dipping into account

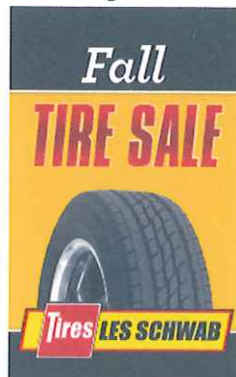
advertising



advertising



advertising





Lewis County Sirens news reporter

CHEHALIS – Deputies and firefighters were called out early this morning when passersby came across a truck that was wrecked and burning on a remote road south of Glenoma. The occupant was deceased.

Lewis County Sheriff's Office Chief Deputy Dusty Breen said the state patrol estimated the Ford F150 was traveling as much as 70 mph on a long straight stretch before striking a tree and catching fire.

The impact was so great it severed the tree, part of which fell back on to the vehicle, according to Breen.

It happened on the 200 Line Champion Haul Road, a gravel road off of Champion Haul Road, he said.

The sheriff's office was dispatched at 6:23 a.m. Members of Lewis County Fire District 18 were joined by personnel from Lewis County Fire District 14 and extinguished the fire.

Breen said they believe it occurred sometime around 5:30 a.m. or 6 o'clock.

The victim's identity is being definitively established by the Lewis County Coroner's Office, but the sheriff's office suspects he is a 27-year-old Glenoma resident.

Chief Breen said as of this afternoon, they didn't really know how or why it happened.

Tags: By Sharyn L. Decker, news reporter

Posted in News briefs | No Comments are posted yet »

advertising

KATHERINE GULMERT
Lewis County Superior Court
Judge, Position Three

**Qualified and
willing to serve**

360-860-1657

Sponsored by Governor's Best Women Column

advertising

Fall
TIRE SALE



Tires LES SCHWAB

EXHIBIT 3

KATHERINE GULMERT

Lewis County Superior Court Judge
Position Number Three



Committee to Elect Katherine Gulmert
1673 S. Market Blvd #118
Chehalis WA 98532

Phone: 360.880.1657
Email: katherine@gulmertforjudge.com
Web: www.GulmertForJudge.com

EXHIBIT 4



KATHERINE GULMERT

Lewis County Superior Court Judge
Position Number Three



Committee to Elect Katherine Gulmert
1673 S. Market Blvd. #118
Chehalis WA 98532

Phone: 360.880.1657
Email: katherine@gulmertforjudge.com
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KATHERINE GULMERT

Lewis County Superior Court Judge
Position Number Three



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1673 S. Market Blvd #118
Chehalis WA 98532

Phone: 360.880.1657
Email: katherine@gulmertforjudge.com
Web: www.GulmertForJudge.com



EXHIBIT 5

ELECT KATHERINE GULMERT

**SUPERIOR COURT JUDGE
POSITION NUMBER THREE**

Committee to elect Katherine Gulmert



McGraw-Hill







Search in Lewis County Sirens



Lewis County Sirens

Public Group · 23049 Members



Joined



Add Members



Search



Info



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Write something...



Sharyn L. Decker

7 mins



"Chehalis: Senior citizen shopper shoots self in foot" from Tuesday September 27, 2016 at 11:40 a.m.



Chehalis: Senior citizen shopper shoots self in foot « Lewis County S...

CHEHALIS – A customer at the checkout c...

lewiscountysirens.com

1 Comment



Like



Comment



Share



Sharyn L. Decker





The case will be forwarded to Chenais Municipal Court prosecutors for a review of possible charges.

Tags: By Sharyn L. Decker, news reporter

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Name (required)

Mail (will not be published) (required)

Website

Submit Comment

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Recent Comments

1. "It's nothing has changed in the last 4 years in Centralia regarding the corruption and negligence. So how many cases..."

File On on Special Court gives Centralia town a "do-over" on 10-plus-year drive-by shooting evidence

2. "Check this slide show profile and picture on LINCOLN. She runs through the old, roadside SPECIAL just another drunk driving..."

Typical on Former special townswoman charged with 10 felony counts for alleged dipping into account

3. "Hemmmmm. Drugs, OVC addiction? Gambling? What an embarrassment for her children..."

Don Schaefer on Former association townswoman charged with 10 felony counts for alleged dipping into account

advertising

Morgan HILL
ATTORNEYS AT LAW

ON YOUR SIDE

Serving Lewis, Mason, Thurston & Grays Harbor Counties
(360) 357-5700

advertising

KATHERINE GULMERT
Lewis County Superior Court Judge, Probation Officer

Qualified and willing to serve

200-880-1917

advertising

Fall

TIRE SALE

Tires LES SCHWAB



advertising

KATHERINE GULMERT
Lewis County Superior Court
Judge, Position Three

 **Qualified and
willing to serve**
360-880-1657
Sponsored by Committee to Elect Katherine Gulmert

advertising

Fall

TIRE SALE

KATHERINE GULMERT

Lewis County Superior Court Judge
Position Number Three



Committee to Elect Katherine Gulmert
1673 S. Market Blvd #118
Chehalis WA 98532

Phone: 360.880.1657
Email: katherine@gulmertforjudge.com
Web: www.GulmertForJudge.com



KATHERINE GULMERT

Lewis County Superior Court Judge
Position Number Three



Committee to Elect Katherine Gulmert
1673 S. Market Blvd #118
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