

**IN THE ADMINISTRATIVE HEARING COMMISSION**

RON CALZONE,	)	
Petitioner,	)	
vs.	)	Case No. 15-1450
	)	
MISSOURI ETHICS COMMISSION,	)	
Respondent.	)	
_____	)	

**PETITIONER’S MOTION TO STRIKE, FOR LEAVE TO FILE RESPONSE TO  
RESPONDENT’S SUR-REPLY, AND TO SUBSTITUTE EXHIBIT**

On February 3, 2016, this Commission held a hearing on Petitioner’s Motion for Judgment on the Pleadings. At that hearing, counsel for Respondent requested the Commission’s leave to file additional briefing addressing its jurisdiction in this matter. The commissioner did not grant the requested leave, although the Ethics Commission was invited to identify legal authority supporting its position.

*1. Respondent’s Sur-Reply*

After that hearing, Respondent Missouri Ethics Commission filed a sur-reply in opposition to Mr. Calzone’s motion. The brief is accompanied by 35 pages of additional documents divided into six exhibits. Because that brief was not authorized by this Commission, and because the Ethics Commission has pointed to no authority otherwise authorizing a sur-reply, Petitioner asks the Administrative Hearing Commission to strike the Ethics Commission’s brief or to impose such other sanction as the Commission may consider appropriate. 1 CSR 15-3.425; *see also Woodward, et al. v. Research Medical Center*, 2005 Mo. App. LEXIS 1248, at \*31 n. 16 (Mo. App. W.D. Aug. 23, 2005) (granting motion to strike).

In addition, or in the alternative, because Respondent raises new post-hearing arguments in its brief, Petitioner requests the Commission's leave to file the attached Response to Respondent's Sur-Reply.

## *2. Respondent's Motion to Amend its Answer*

Respondent's Motion is untimely. It was filed after the hearing in this matter, and it does would not serve the interest of justice to allow the Respondent to introduce new arguments and material after the completion of the hearing. Although Respondent claims that "the parties will not experience hardship from the addition of one new phrase in the amended answer," this is untrue on two levels. First, the "new phrase" in question is, in reality, a reference to a proposed Exhibit 5, which contains over 30 pages of new material. This is not simply "one new phrase."

Second, the parties have already experienced hardship in having to respond to the Ethics Commission's untimely filing. Mr. Calzone's motion has been argued. Neither of his attorneys reside in either Jefferson City or St. Louis, and neither anticipated the need to respond to the Ethics Commissions unauthorized post-hearing filing, which only compounds the ongoing burden of defending against the Ethics Commission's improper attack on Mr. Calzone's activities as a private, politically engaged citizen. In light of its prior violation of the U.S. Constitution and Missouri law in regard to Mr. Calzone, the Ethics Commission should not be permitted additional license to ignore the rules of civil procedure by filing these untimely, unauthorized pleadings.

### *3. Respondent's Exhibit is Improper and Should be Replaced*

Lastly, at the February 3, 2016, hearing the Ethics Commission asked to supplement the record with a true and correct copy of the original complaint that attorney Michael Dallmeyer filed on behalf of his client, the Missouri Society of Governmental Consultants. While Petitioner did not object, the Ethics Commission was asked if the proposed exhibit would include the cover letter to the Ethics Commission's complaint, which explicitly stated that the complaint was being filed on behalf of the Missouri Society of Governmental Consultants. Counsel for the Ethics Commission indicated that it would.

Nevertheless, the Ethics Commission's sur-reply includes a number of lengthy exhibits, the first of which is the complaint form initiating the MEC's action *without the accompanying cover letter*, which is buried 35 pages later as an apparent afterthought to its Exhibit E. This is not consistent with the agreement made at yesterday's hearing. Permitting this misleading filing would only serve to muddy, not clarify, the record in this case.

For the reasons already stated, the Administrative Hearing Commission should strike the Ethics Commission's Sur-Reply, along with its accompanying exhibits, and should deny the Ethics Commission's Motion to Amend, including its effort to introduce additional proposed exhibits. Instead, the attached Exhibit E, which accurately reflects the document proffered at the hearing on Petitioner's motion, should be admitted as part of the record before this Commission.

\* \* \*

For the foregoing reasons, the Administrative Hearing Commission should strike the Ethics Commission's Sur-Reply, deny the Ethics Commission's Motion to Amend, and instead should take into the record the attached Exhibit. This Commission should also take such other action pursuant to 1 CSR 15-3.425 as it may consider appropriate.

Respectfully submitted,



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David E. Roland Mo. Bar #60548  
FREEDOM CENTER OF MISSOURI  
P.O. Box 693  
Mexico, MO 65265  
Phone: (314) 604-6621  
Fax: (314) 720-0989  
Email: dave@mofreedom.org

Allen Dickerson\*  
CENTER FOR COMPETITIVE POLITICS  
124 S. West St., Suite 201  
Alexandria, VA 22314  
Phone: (703) 894-6800  
Fax: (703) 894-6811  
Email: adickerson@campaignfreedom.org

*Counsel for Petitioner*

\*admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I certify that on February 4, 2016, I served a true and correct copy of the above Motion to

Strike on Respondent's counsel at:

Curtis R. Stokes  
P.O. Box 1370  
Jefferson City, MO 65102  
Phone: (573) 751-2020  
Fax: (573) 522-2226  
Curt.Stokes@mec.mo.gov

*Attorney for Respondent*

  
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David E. Roland