

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BEVERLY MALAZZO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2512249

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 14, 2006, to consider sworn complaint SC-2512249. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.006 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent unlawfully used a representation of the state seal in political advertising and represented in political advertising that she held an office she did not hold.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was appointed as a Juvenile Court Referee of Harris County by the Harris County Juvenile Board in November 2001. She was an unsuccessful candidate for district judge in the March 2006 primary election.
2. The respondent distributed or authorized the distribution of a letter in early November 2005, which included a representation of the state seal.
3. The letter also stated:

Judge Beverly B. Malazzo
ASSOCIATE JUDGE • JUVENILE DIVISION • HARRIS COUNTY
FOR JUDGE, 315 DISTRICT COURT.

[. . .]

Please join the friends, family & supporters of
Judge Beverly Malazzo

As she kicks off her campaign for Judge,
315th Juvenile District Court

3. The letter also stated, “Pol ad pd for by Judge Beverly Malazzo for Judge Campaign.”
4. The respondent admits that her letter included the state seal but swears that she “did not knowingly use the seal as she was not aware of a prohibition to the use of the seal [sic], nor was she aware of this section of the Election Code” and that she “relied upon the expertise of her campaign manager” who designed the letter.
5. The respondent submitted business cards provided to her and other referees and employees by Harris County that include the state seal.
6. The online directory for Harris County states that the respondent’s title is “Juvenile Court Referee” and “Relief Referee.”
7. The complainant submitted a printout from the online directory of Harris County that states that the respondent has the title of “Juvenile Court Referee.”
8. The respondent swears that she “never had the intent to represent to an ordinary and prudent person that she held a public office that she does not hold” and that she “never knowingly represented in a campaign communication that she held a public office that she does not hold.”
9. The respondent swears that “the position currently held by Judge Malazzo is a position referred to as Associate Judge.”
10. The respondent submitted business cards and business stationery provided to her by the county that state:

BEVERLY B. MALAZZO
ASSOCIATE JUDGE
DISTRICT COURTS—JUVENILE DIVISION.

11. The respondent submitted business cards provided to “masters” of the same county juvenile courts that also use the title “associate judge” and provided copies of reports from the Harris County Juvenile Probation Department and the Houston Bar Association that list the respondent’s name with the title of “Associate Judge.”
12. The respondent submitted copies of order forms that are filled out regarding detention hearings and which provide a space for the referee’s signature on a line above the title “Associate Judge.”

13. The respondent swears that she relied upon a political consultant who, upon the respondent's request, contacted the commission to inquire whether the respondent could use the title "Judge" in her political advertising. A copy of an e-mail message between the consultant and the respondent states that the consultant was told by a staff attorney that the word "Associate" should be included before the word "Judge" in the respondent's political advertising to "avoid anyone misinterpreting anything."

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. A person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising. ELEC. CODE § 255.006(d). For purposes of title 15 of the Election Code, an officeholder is a person who holds an elective public office or is the secretary of state. *Id.* § 251.002(a).
2. Political advertising is defined, in pertinent part, as a communication supporting a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16).
3. The letter authorized or distributed by the respondent was a circular, flier, or similar form of written communication that supported her as a candidate for district judge. Therefore, the letter was political advertising.
4. At the time the letter was distributed, the respondent was a juvenile court referee appointed by the Juvenile Board of Harris County, and there is no evidence that the respondent held any other office. A juvenile court referee is appointed by the juvenile board of a county. FAM. CODE § 51.04(g). Thus, the position of juvenile court referee is not an elective public office.
5. There is credible evidence that the respondent distributed or authorized the distribution of political advertising that she knew included a representation of the state seal at a time when she did not hold an elective public office. Therefore, there is credible evidence that the respondent violated section 255.006(d) of the Election Code.
6. A person commits an offense by knowingly entering into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. ELEC. CODE § 255.006(a).
7. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). A campaign communication

means, in pertinent part, a written communication relating to a campaign for nomination or election to public office. ELEC. CODE § 251.001(17).

8. The letter at issue was political advertising because it was a circular, flier, or similar form of written communication that supported the respondent as a candidate for district judge. The letter was also a campaign communication because it was a written communication relating to the respondent's campaign for election to public office.
9. There is insufficient evidence that the respondent intended to represent to an ordinary and prudent person that she held the title of "Judge" at the time she had the letter printed and distributed. Therefore, there is insufficient evidence that the respondent violated section 255.006(a) of the Election Code.
10. A person violates section 255.006(b) of the Election Code by knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. There is no need to show the person's intent at the time the agreement is made to print or publish the communication.
11. The evidence shows that Harris County permitted the respondent to use the title "Associate Judge." The respondent had been informed that commission staff recommended that she use the title "Associate Judge" rather than "Judge" in her political advertising to clarify that she does not hold the office of district judge. The evidence also shows that the respondent attempted to partially comply with staff's recommendation by including a relatively small title of "Associate Judge" in the letter while proceeding to include "Judge" several times. The use of the title "Judge" in the letter at issue represented that she held an office she did not hold because she held the title of "Associate Judge" rather than "Judge." However, the context of its use constitutes a technical or *de minimis* violation. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 255.006(b) of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person other than an officeholder may not knowingly use a representation of the state seal in political advertising, and that a person may not

knowingly represent in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violations described under Sections III and IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2512249.

AGREED to by the respondent on this _____ day of _____, 20__.

Beverly Malazzo, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director