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Office of Bar Counsel

Board on Professional Responsibility
District of Columbia Court of Appeals
515 5th Street NW
Building A, Suite 117
Washington, DC 20001

Re: Caroline Hunter, FEC Commissioner

NOTICE OF COMPLAINT

Velvet Revolution (VR), an NGO non-profit network of over 150 organizations representing more than a million of members nationwide, including in Washington D.C., hereby files this disciplinary complaint against **Caroline Hunter**, current FEC Commissioner; Federal Election Commission, 999 E Street, NW, Washington, DC 20463 (800) 424-9530 In Washington (202) 694-1000. VR calls upon the *Board on Professional Responsibility, District of Columbia Court of Appeals* to take immediate disciplinary action against Ms. Hunter, in the form of disbarment, for violations of the *D.C. Rules of Professional Conduct*.

SUMMARY OF COMPLAINT

Caroline Hunter breached her legal duty and violated the *D.C. Rules of Professional Conduct* by giving misleading sworn testimony, belied by the facts, in the U.S. Federal Court in Newark, New Jersey. Presiding Judge Dickinson R. Debevoise made findings in a 2004 election law case that: "Miss Hunter's information and belief is belied by the evidence developed during the brief period of discovery." [See attached court transcript]. Further, on-the-record expert legal opinion is that Ms. Hunter breached legal ethics warranting disciplinary action by the relevant state Bar. [See EXPERT OPINION below].

Specifically, Ms. Hunter, in a sworn affidavit [see attached PDF] entered into the court record, provided misleading testimony, amounting to a carefully worded attempt to conceal the role of the Republican National Committee (RNC) in illegal vote suppression activities just prior to the 2004 presidential election.

In sworn testimony to the court [see item #3, p. 3 or 36] Ms Hunter claims that:

“to the best of her knowledge, after due investigation, the RNC is not initiating, controlling, directing, or funding any programs of 'voter challenges' ... including the effort by the Ohio Republican Party to challenge voter registrations in Ohio...”

After a brief discovery period, Judge Debevoise determined that in fact there was proof of voter suppression activities in the Ohio case, directly contradicting Ms. Hunter’s testimony and casting severe doubt on her claim of “due investigation.” The evidence indicates that Ms. Hunter as RNC legal counsel would have been made aware of these illegal activities in Ohio, most especially after any internal “due investigation.” The judge found that she intentionally issued the carefully crafted and misleading sworn statement in her affidavit.

RNC e-mails submitted as evidence in the case suggest Ms. Hunter’s involvement in discussions related to the illegal caging of voters, which would constitute a violation of the *D.C. Rules of Professional Conduct*. Additionally, while the careful wording of the affidavit may legally shield Ms. Hunter from a criminal charge of perjury, qualified experts agree that the misleading nature of her statement, belied by the facts in the case as documented in the court, merits disciplinary action, including disbarment.

Therefore, in order to uphold the highest standards in our nation’s judicial system, and to further guard the integrity of Federal Election Law, VR hereby calls upon the Board on Professional Responsibility, District of Columbia Court of Appeals to act immediately to disbar Ms. Hunter for conduct that is a clear violation of the standards of professional lawyerly and ethical conduct, and an affront to the intrinsic guiding imperatives of our country.

HISTORICAL BACKGROUND & CONTEXT

In 1981, the Democratic National Committee (DNC) accused the Republican National Committee (RNC) of violating the Voting Rights Act by using vote-caging tactics in predominantly minority precincts in Newark and surrounding areas.

On July 29, 1982, the RNC agreed to settlement of the case [Civil Action B1-3876], which resulted in an Order of Dismissal [see attached] expressly forbidding the RNC from engaging in any efforts to prevent allegedly unqualified voters from casting a ballot.

In 1987, a revised Consent Order, dated November 1st [see attached], added a provision that required the RNC to first gain approval from the court before engaging in any ‘ballot security’ measures.

The 1987 Consent Order states:

"[T]he RNC shall not engage in, and shall not assist or participate in, any ballot security programs unless the program (including the method and timing of any challenges resulting from the program) has been determined by this Court to comply with the provisions of the Consent Order and applicable law."

In 2004, the DNC filed an injunction against the RNC for ballot security programs aimed at purging over 35,000 voters in Ohio ahead of the 2004 Presidential elections. At the time, Caroline Hunter was serving as deputy counsel to the Republican National Committee.

During the run-up to the election, Hunter participated in a September 30 conference call during which "Voter Reg Fraud Strategies" were developed. Her name appears near the top of the list of conference call participants. [see attached 9-30-04 RNC email copied from Page 3 of 43 of Court document 23-7; Filed 11/01/2004 in Case 2:81-cv-03876-DRD-SDW]

Subsequently, six days later as Exhibit 7 reveals, Hunter received at least one email from top-level GOP/RNC Party officials directly engaged in the process of vote caging in Ohio, where the interveners filed the injunction. Hunter's email address is the only one tagged "Legal" in threads where senior party organizers concern themselves with GOP 'fingerprints' on their voting caging activities. [See pages 17-18, Document 23-7]

No emails released by the GOP in evidence in Exhibit 7 reveal any legal concerns or issues raised by Ms. Hunter despite her clear involvement as part of a high level team within the RNC developing and implementing explicit vote caging activities.

Unprecedented FEC Inaction on Key Election Laws

It should also be noted that since the arrival of Ms. Hunter as a Commissioner at the FEC partisan deadlock has led to a 600% spike in FEC inaction relative to the enforcement of Federal election laws. [<http://rawstory.com/rs/2010/0401/fec-inaction-enforcing-campaign-laws-skyrocketed-600-percent-2009/>]

CASE FOR DISBARMENT -- District of Columbia (D.C.) Rules of Professional Conduct

The case for Ms. Hunter's disbarment is simple and clear. Above all, a lawyer must demonstrate respect for the legal system. However, in her work as Deputy Counsel for the RNC, Ms. Hunter did not.

The strongest count in evidence against Ms. Hunter is not expressly defined in *D.C. Rules of Professional Conduct*. Addressing **Scope** (p. 4), it reads, "**The Rules do not exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules.**" Ms. Hunter acted in a manner that undermined the integrity of our Federal elections by attempting to mislead

the court as it sought the facts in the case concerning illegal vote caging/suppression activities by the RNC.

The Judge in the case made this clear: "Miss Hunter's information and belief is belied by the evidence developed during the brief period of discovery."

It should be emphasized that the Court's judgment was rendered after a "brief period of discovery," clearly indicating the evidence of illegal activity during the period in question would have been readily available to Ms. Hunter as Deputy Counsel to the RNC when she was a party to vote caging conference calls ahead of the 2004 Presidential vote in Ohio.

Rule 3.1 B (Meritorious Claims and Contentions, p. 100) calls for lawyers "to inform themselves about the facts of their clients' cases and the applicable law"

Again, a short discovery process found Ms. Hunter's statement to be belied by the established facts. In her carefully worded statement, Ms. Hunter revealed at minimum her manifest failure to inform herself with the facts of the case, or worse an intention to mislead the court about the activities she was at least a peripheral participant. And in this she violated Rule 3.1 B of the D.C. Rules of Professional Conduct, thus meriting disciplinary action.

Rule 3.3 B Candor to Tribunal

(a) A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6;

Misleading statements made by Ms. Hunter belied by the fact in the case, according the presiding judge, merits disciplinary action. Indeed, the evidence points to the fact that Ms. Hunter violated Rule 3.3 B.

Summary

The evidence clearly indicates that Ms. Hunter violated the "scope" provision and Rule 3.1B of the D.C. Rules with her misleading statements in her affidavit entered into evidence in the 2004 case. And thus disciplinary action is also clearly warranted. A number of top experts have agreed. [See following section].

EXPERT TESTIMONY

Gery Hebert, 20-year veteran of Justice Department, Election Law Expert

In an account of on-the-record analysis offered to Rawstory.com, Gerry Hebert, an election law expert and 20 year veteran of the Justice Department responsible for prosecuting voting rights cases, addressed Ms. Hunter's attempt to mislead the court and the mandates of the consent decree:

Heber pointed out that although Hunter said the RNC had not been involved in "initiating, controlling, directing, or funding" voter challenges, her statement was merely "very carefully worded."

"It doesn't mean they were not aware, it doesn't mean they did not participate, it doesn't mean that they didn't assist in the programs of voter challenges of the Ohio State Republican Party.

"The judge makes findings of fact that directly contradict her statement.

"At a minimum, it strikes me as misleading."

Deborah Rhode, Legal ethics professor at Stanford University

"It's very troubling that a lawyer who presently sits as a federal official at the FEC would submit a document under oath to a court that a court finds is contrary to fact."

Joe Rich, a former Chief and forty-year veteran of Voting Section at the Justice Department

"She was discredited by the judge. He didn't find her credible."

<http://rawstory.com/rs/2010/0330/fec-commissioner-conceal-vote-suppression/>

KEY DOCUMENTS IN EVIDENCE

Court Documents

Exhibit D, Document 21-5; Filed 10/29/2004; Case 2:81-cv-03876-DRD-SDW 36 pages [PDF]

Exhibit 7 -- Document 23-7; Filed 11/01/2004; Case 2:81-cv-03876-DRD-SDW 43 pages. [PDF]

Consent Order – Democratic National Party, et. al. v. Republican National Committee, et. al. -- Civil Action 81-3876 – Filed November 1, 1982 [PDF]

Transcript of November 1st hearing, Civil Action 81-3876 [MS WORD]

Settlement Stipulation and Order of Dismissal, Civil Action 86-3972, July 29, 1987. [PDF]

Articles/Media

Exclusive: FEC commissioner helped RNC conceal role in 2004 vote suppression

By Brad Jacobson; Tuesday, March 30th, 2010

<http://rawstory.com/rs/2010/0330/fec-commissioner-conceal-vote-suppression/>

Ideology trumps experience in Federal Election Commissioner's rise

By Brad Jacobson; Wednesday, March 31st, 2010

<http://rawstory.com/rs/2010/0331/ideology-trumps-experience-federal-election-commissioners-rise/>

Exclusive: FEC inaction on enforcing election laws rises more than 600 percent

By Brad Jacobson; Thursday, April 1st, 2010

<http://rawstory.com/rs/2010/0401/fec-inaction-enforcing-campaign-laws-skyrocketed-600-percent-2009/>

Sincerely,



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