

BEFORE THE GWINNETT COUNTY ETHICS BOARD
STATE OF GEORGIA

Nancie Turner,)	
)	
Complainant,)	CASE NO.
)	2017-GCEB-0001
and)	
)	
Commissioner Tommy Hunter,)	
)	
<u>Respondent.</u>)	

FINDINGS AND RECOMMENDATIONS

This matter is before the Ethics Board on the Complaint of Nancie Turner (“Complainant”) against Commissioner Tommy Hunter.

A. Introduction

1.

Complainant, through her counsel of record, Christine A. Koehler and Helen Ho, initiated these proceedings on February 6, 2017 by submitting a written, verified, and sworn Complaint and supporting materials to the County Attorney and serving a copy thereof on Commissioner Hunter in accordance with Section 54-37(a)(1) and (a)(7) of the Gwinnett County Code of Ethics (“Ethics Code”). In her Complaint, Ms. Turner described conduct allegedly engaged in by Commissioner Hunter which she contends constitute violations of various provisions of the Ethics Code. (Attachment A).

2.

Upon receipt of the Complaint, the County Attorney timely caused a copy thereof to be delivered to Attorney Ken Jarrard, a hearing officer appointed to evaluate the Complaint's compliance with the technical requirements of the Ethics Code. In a written decision dated February 13, 2017, Mr. Jarrard concluded that the Complaint was compliant. (Attachment B).

3.

Subsequent to receipt of Mr. Jarrard's decision, and in accordance with Section 54-37(a)(6) of the Ethics Code, the County Attorney forwarded copies of the Complaint to the Board of Commissioners, the Gwinnett County District Attorney, the Gwinnett County Bar Association, and the Association County Commissioners of Georgia for purposes of making appointments to the Ethics Board. These organizations subsequently appointed Herman Pennamon, Teri Duncan, David Will, and Fayette County Commissioner Charles Rousseau, respectively. Commissioner Hunter was also notified of his right to appoint a fifth member to the Ethics Board, but declined to do so. (Attachment C).¹

The initial organizational meeting of the Ethics Board was noticed for and held on March 31, 2017. At that meeting, each appointee to the Board was qualified and empaneled. Ethics Board members Will and Rousseau were selected by the Board to serve as its Chairman and Vice-Chairman, respectively. Julie Mims, a Legal Manager in the County's Department of Law, was appointed Clerk to the Ethics Board, and the Board approved in principle various procedural rules to govern the proceedings going forward. At the conclusion of the meeting, the Ethics Board's appointed legal counsel, R. Read Gignilliat, was tasked with preparing a written set of procedural rules in accordance with those approved by the Board. Finally, on behalf of the Ethics Board, Chairman Will executed a Notice formally advising Commissioner Hunter of his right to file a Reply to the Complaint within thirty (30) days of his receipt of said Notice. (Attachment D.) A copy of this Notice was duly delivered to Commissioner Hunter prior to the close of business on March 31, 2017.

¹ Under Section 54-37(a)(4) of the Ethics Code, three members of the Ethics Board constitutes a quorum; therefore, with four of five members appointed, the Ethics Board was competent to proceed with its duties and responsibilities under the Ethics Code; to wit, to investigate the allegations of the subject complaint, make findings based on its consideration of the evidence, and make any appropriate recommendations to the Board of Commissioners.

5.

The next meeting of the Ethics Board was noticed for and held on May 12, 2017, a date selected to afford Commissioner Hunter sufficient time to prepare and submit his Reply to the Complaint against him. Once again, Commissioner Hunter elected not to participate in the proceedings before the Ethics Board, allowing the 30-day deadline to expire without submitting a Reply or any other response to the Complaint. During the May 12, 2017 meeting, the Ethics Board considered and approved the written procedural rules prepared by Mr. Gignilliat as directed at the conclusion of the previous meeting. (Attachment E).

6.

The next meeting of the Ethics Board was noticed for May 31, 2017 for the primary purpose of conducting an evidentiary hearing on the Complaint in accordance with Section 54-37(b) of the Ethics Code. In advance of the hearing and in accordance with the procedural rules adopted by the Ethics Board, Complainant, through Ms. Koehler, timely submitted witness lists, exhibit lists, and requests for subpoenas. Commissioner Hunter, on the other hand, elected not to submit witness or exhibit lists or to request any subpoenas. However, on May 30, 2017 – less than 24 hours prior to the hearing, Commissioner Hunter, through his newly-retained attorney, Dwight L. Thomas, submitted a request for continuance to Chairman Will.

(Attachment F). Chairman Will declined to rule on the request, however, opting instead to refer the issue to the full Board.

7.

The Ethics Board met on May 31, 2017 as scheduled and took up consideration of Commissioner Hunter's request for continuance. After hearing argument from both Mr. Thomas and Ms. Koehler on behalf of their respective clients, the Ethics Board denied the requested continuance and moved forward with the hearing on the Complaint.² Accordingly, the Chairman opened the hearing and invited the parties to make opening statements. Ms. Koehler presented an opening statement on behalf of Complaint. In her opening statement, Ms. Koehler indicated that Complainant was formally withdrawing Complainant's request for referral of the Complaint to criminal authorities under Section 54-38(b)(5) of the

² The Ethics Board also decided not to accept Mr. Thomas's entry of appearance which was untimely pursuant to its procedural rules. (Attachment G). Commissioner Hunter was advised that while Mr. Thomas could attend and consult with him throughout the hearing, Mr. Thomas would not be permitted to actively participate in the hearing.

Ethics Code.³ Commissioner Hunter declined to make an opening statement.⁴

8.

Ms. Koehler called Commissioner Hunter as Complainant's first witness. After being placed under oath, Commissioner Hunter was asked a series of questions relevant to the Complaint against him. In each instance, in lieu of a substantive answer, Commissioner Hunter responded by invoking O.C.G.A. § 24-5-505(a) ("No party or witness shall be required to testify to any matter ... which shall tend to bring infamy, disgrace, or public contempt upon such party or witness..."). Commissioner Hunter requested and received permission from Chairman Will to depart the hearing upon concluding his testimony. He did not return.

9.

Ms. Koehler next called Complainant to testify in support of her Complaint against Commissioner Hunter. Complainant provided details concerning the factual allegations of her Complaint and authenticated the

³ Nevertheless, the Ethics Board feels compelled to note that Commissioner Hunter's actions, as described in the Findings herein, did not raise any need for a referral to a criminal authority under Section 54-38(b)(5).

⁴ Chairman Will advised Commissioner Hunter that he would be permitted to present his opening statement unsworn.

various exhibits attached thereto. As her last witness, Ms. Koehler called Robin Martinelli, a process server retained to serve the hearing subpoena on Commissioner Hunter on behalf of Complainant. Ms. Martinelli testified regarding comments made by Commissioner Hunter when served with the subpoena.

10.

Complainant rested her case upon tendering a certified copy of a letter written by Charlotte Nash, Chairman of the Gwinnett County Board of Commissioners, to Congressman John Lewis.

11.

Records reflecting Commissioner Hunter's receipt of ethics training mandated by the County as well as by State law were entered into the hearing record. Chairman Will invited the parties to present closing arguments. Ms. Koehler presented a closing argument on behalf of Complainant, whereas Commissioner Hunter – who had departed the hearing upon completion of his testimony – presented no closing argument on his behalf. Chairman Will thereafter declared the hearing record – and the Ethics Board's investigation into the Complaint – closed.

B. Findings

1.

Having deliberated upon the evidence presented during the hearing and its investigation of the Complaint, the Ethics Board makes the following findings, by majority vote, based on a preponderance of the evidence.

2.

Based on the testimony of Complainant, which was uncontroverted by Commissioner Hunter and was in all other respects credible, the Ethics Board finds that on January 14, 2017, Commissioner Hunter posted on his Facebook page – which at the time was maintained without any restrictions on public access that U.S. Congressman John Lewis was a “racist pig.”⁵ In the same post, Commissioner Hunter referred to members of the Democrat Party as “DemonRats” and “a bunch of idiots.” (Complainant Exh. 1).

⁵ As previously noted, when presented with an opportunity to testify in possible mitigation of his post regarding Congressman Lewis, Commissioner Hunter elected instead to invoke O.C.G.A. § 24-5-505(a). Tellingly, in so doing, he acknowledged that his testimony on the subject would subject him to “infamy, disgrace, or public contempt.” Further, because the hearing was administrative in nature, the Ethics Board is entitled to infer from Commissioner Hunter’s assertion of O.C.G.A. § 24-5-505(a) that any testimony he would have given in response to the questions he was asked would have been adverse to his position in the hearing. *See Brewer v. Brewer*, 249 Ga. 517, 291 S.E.2d 696 (1982).

3.

Due to the highly offensive and controversial nature of the post and substantial negative public reaction it attracted, on January 17, 2017, Charlotte Nash, the Chairman of the Gwinnett County Board of Commissioners, felt compelled to write a letter to Congressman Lewis on behalf of herself, the Board of Commissioners, and the residents of Gwinnett County, expressing "sincere apologies and regrets for the disrespectful comments" posted by Commissioner Hunter and offering her assurances that the comments "do not reflect the opinions of the Board of Commissioners ... or Gwinnett County residents as a whole ... most of [whom] honor you as a leader in the civil rights movement and as a long-term public servant, even those who may hold different political stances." In her letter, Chairman Nash also observed that, notwithstanding Commissioner Hunter's conduct, the Board of Commissioners as a whole does not "condone the use of social media to spread negative thoughts about any individual," "understands that our communications carry the weight of our offices, [and believe that] hurtful words and name-calling should not have a place in governing." (Complainant's Exh. 7).

4.

The Ethics Board further finds that, in contrast to Chairman Nash's actions as described above, Commissioner Hunter - once replies from

members of the public taking offense at his post about Congressman Lewis began to appear on his Facebook page - chose to exacerbate the situation by posting a meme stating, "If you're easily offended and looking for a 'safe place,' my page ain't it. Move along, snowflake." (Complainant Exh. 2).⁶

5.

Commissioner Hunter's post regarding Congressman Lewis and his subsequent post flagrantly dismissing those whose expressed offense to it prompted Complainant's examination of his previous posts. One such post suggested that President Trump should appoint former presidential candidate Jill Stein as ambassador "to Syria or Afghanistan or somewhere like that," which Complainant interpreted - and the Ethics Board agrees - was a reference to placing Ms. Stein in physical danger by sending her to a country suffering from instability and violence. (Complainant Exh. 3). In another post, Commissioner Hunter declared himself to be one of the "angry white men" who, according to a Fox News article shared in the same post, Bill Clinton blamed for his wife's loss in the 2016 presidential election. (Complainant Exh. 4). Finally, in another post, Commissioner Hunter

⁶ Although it would have been preferable for Commissioner Hunter to have provided testimony regarding these issues himself, the Ethics Board believes that it is nevertheless appropriate to acknowledge that he did subsequently take steps designed to mitigate the impact of his conduct, including making a public apology to Congressman Lewis, visiting the National Center for Civil and Human Rights, and (attempting) to address the local chapter of the NAACP.

referred to liberals as “libtards,” which Complainant interpreted – and the Ethics Board agrees – was an abbreviated reference to “liberal retards.” (Complaint Exh. E).

6.

Complainant first alleges that Commissioner Hunter engaged in conduct that violated Section 54-24(2) of the Ethics Code which requires that “[a]ll County Commissioners shall ... [p]ut loyalty to the highest moral principles and to the County above loyalty to persons, party, or a County government department.” The Ethics Board finds that this alleged violation is sustained.⁷

⁷ It is apparent from a review of the Ethics Code as a whole that its primary purpose is to eliminate public corruption, actual or perceived conflicts of interest, financial misconduct, political recrimination or favoritism, retaliation and coercion, undue influence, and the like. In addition, Section 54-24 – the only section upon which the Complaint is based – appears as an introductory provision of the Ethics Code preliminary to the more specific provisions and, in some respects, could be regarded as more aspirational than substantive. Commissioner Hunter’s overall refusal to participate in the proceedings before the Ethics Board precluded a complete and thorough examination of this issue. On the other hand, it is noted that the Complaint was deemed compliant with the Ethics Code as a prerequisite to convening the Ethics Board. *See* Section 54-37(a)(3). In addition, the Ethics Code, by its express terms, is to “be construed broadly to effectuate its purposes,” *see* Section 54-25(a), which expressly include the promotion of conduct that is independent, impartial and responsible to the people, that is free from the appearance of impropriety, that does not tend to undermine public confidence in governmental integrity, and that is otherwise compatible with the best interests of the County. *See* Section 54-23. For these reasons, the Ethics

7.

Complainant next alleges that Commissioner Hunter engaged in conduct that violated Section 54-24(11) of the Ethics Code which requires that “[a]ll County Commissioners shall ... [n]ever engage in conduct which is unbecoming to a member or which constitutes a breach of public trust.” The Ethics Board finds that this alleged violation is sustained.

8.

Complainant additionally alleges that Commissioner Hunter engaged in conduct that violated Section 54-24(16) of the Ethics Code which requires that “[a]ll County Commissioners shall ... [u]phold these principles [of the Ethics Code], ever conscious that public office is a public trust and is an honor, not a right.” The Ethics Board finds that this alleged violation is not sustained.

9.

Finally, Complainant initially alleged that Commissioner Hunter engaged in conduct in violation of O.C.G.A. § 45-11-4 and requested referral to the Solicitor General or any criminal authority under Section 54-38(b)(5) of the Ethics Code. Although Complainant later withdrew this allegation

Board finds that Complainant’s exclusive reliance on Section 54-24 of the Ethics Code does not affect the validity of her Complaint.

and request at the hearing, the Ethics Board finds that this alleged violation is not sustained.

10.

With regard to the first violation, the Ethics Board finds that the acts committed by Commissioner Hunter reflect considerable disloyalty to the County within the meaning of Section 54-24(2) in several respects. In particular, the Ethics Board finds that Commissioner Hunter's conduct drew and continues to draw an extraordinary amount of negative attention to him as a County representative, to the Board of Commissioners as a whole, and to other County officials, employees, and residents from the public, including most notably the news media, public interest groups, and social activists. The Ethics Board finds that Commissioner Hunter's conduct led to protests which have, at times, disrupted or threatened to disrupt County operations, both internally and within the community, including the regular business of the Board of Commissioners. The Ethics Board further finds that Commissioner Hunter's conduct was also of a nature that threatened his and the Board of Commissioners' leadership authority, threatened to create disrespect for him and the Board of Commissioners both internally and in the community, and threatened to compromise important working relationships for the County both internally and in the community. Accordingly, the Ethics Board finds that

Commissioner Hunter's conduct as described reflects willful indifference and intentional disregard for its substantial negative impact on the County and, as such, constitutes disloyalty to the County within the meaning of Section 54-24(2) of the Ethics Code.

11.

With regard to the second violation, the Ethics Board finds that the acts committed by Commissioner Hunter were also unbecoming a member of the Board of Commissioners and constituted a breach of public trust within the meaning of Section 54-24(11) of the Ethics Code. Chairman Nash's letter to Congressman Lewis, quoted above, provides an eloquent and accurate illustration of how Commissioner Hunter's conduct departed from acceptable standards. Furthermore, in addition to the reasons identified above regarding how Commissioner Hunter's conduct was detrimental to the County's interests, the Ethics Board finds that his conduct was of a nature that threatens to undermine the public's trust and confidence in County operations and the Board of Commissioners generally. Accordingly, the Ethics Board finds that Commissioner Hunter's conduct as described constitutes a violation of Section 54-24(11) of the Ethics Code as well.⁸

⁸ Although not expressed as a violation of the Ethics Code in the Complaint, the Ethics Board nevertheless notes that certain aspects of

12.

With respect to the third alleged violation – for which the Ethics Board has deemed not sustained – the reason for the Ethics Board’s finding is that this allegation is duplicative of Section 54-24(11) of the Ethics Code. Furthermore, there is no evidence before the Ethics Board as to Commissioner Hunter’s mental processes or intent when engaging in the conduct alleged by Complainant.

13.

Because Complainant withdrew her request to the Ethics Board for referral to the Solicitor General for alleged violation(s) of O.C.G.A. § 45-11-4, the Ethics Board finds it necessary to comment that none of the findings of fact indicate that Commissioner Hunter’s conduct warrant referral to the Solicitor General or any criminal authority under Section 54-38(b)(5) of the Ethics Code.

Commissioner Hunter’s conduct are inconsistent with Section 54-24(1) of the Ethics Code. In particular, this provision requires County officials to avoid conduct inconsistent with the Constitution as well as with County ordinances. In this regard, Commissioner Hunter’s practice of exiting Board meetings during the public comment stage has deprived members of the public of their First Amendment opportunities to express their grievances. Likewise, Commissioner Hunter’s failure to participate in the proceedings before the Ethics Board further reflect conduct inconsistent with his obligations under the Ethics Code – a County ordinance.

C. Non-Binding Recommendations

1.

With regard to the first sustained violation concerning acts committed by Commissioner Hunter reflecting disloyalty to the County within the meaning of Section 54-24(2), the Ethics Board recommends that the Board of Commissioners issue a written reprimand to Commissioner Hunter pursuant to Section 54-38(d)(1) of the Ethics Code. The Ethics Board further recommends that the written reprimand be publically delivered to Commissioner Hunter, that it be posted on the County website, that it be published in the relevant County legal organ, and that it be publically posted in the County courthouse.

2.

Addressing the second sustained violation regarding the acts committed by Commissioner Hunter which have been deemed unbecoming as member of the Board of Commissioners and constituted a breach of public trust within the meaning of Section 54-24(11) of the Ethics Code, the Ethics Board recommends that the Board of Commissioners issue a written reprimand to Commissioner Hunter pursuant to Section 54-38(d)(1) of the Ethics Code. The Ethics Board further recommends that the written reprimand be publically delivered to Commissioner Hunter, posted on the

Board of Commissioners' website, published in the relevant County legal organ, and publically posted in the County courthouse.

3.

Finally, the Ethics Board notes that the Complainant is not a resident of Gwinnett County. Under Section 54-37(a)(1) of the Ethics Code, as currently written, any "person," regardless of where they live, or whether they have any connection with the County can file an Ethics complaint. The Ethics Board is mindful that the purpose of the Ethics Code is to "establish ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best *interests of the County.*" See Ethics Code Section 54-2. Given the considerable resources committed to this process, the Ethics Board recommends that consideration be given to amending the Ethics Board to change the definition of "person" under Section 54-37(a)(1) to: 1) a resident of Gwinnett County; 2) an employee of Gwinnett County (or an applicant for employment); and 3) a contractor/vendor with the County or prospective contractor/vendor.

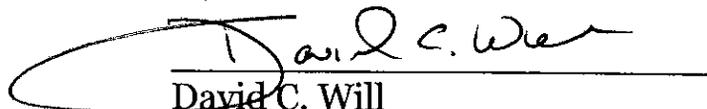
D. Conclusion

Issuance of the foregoing findings and recommendations concludes the session for which the Ethics Board was specifically empaneled. Accordingly, each member of the Ethics Board having fully and faithfully discharged his/her duties and responsibilities under the Ethics Code with respect to the subject Complaint, their appointments are hereby expired. See Ethics Code, Section 54-37(d)(3).

The Clerk of the Ethics Board is hereby directed to provide these findings and recommendations to the Board of Commissioners, to Commissioner Hunter, and to Complainant in accordance with Section 54-37(b)(5) of the Ethics Code.

Respectfully submitted, this 6th day of June, 2017.

FOR THE ETHICS BOARD:



David C. Will
Chairman