

CIVIL COVER SHEET

Clark County, Nevada.

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Bob Beers

Defendant(s) (name/address/phone): Allsion Copening, personally,
and Nevada Democratic Party

Attorney (name/address/phone):
Craig A. Mueller, Esq.

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

Arbitration Requested

Civil Cases

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- NRS Chapters 78-88
- Commodities (NRS 90)
- Securities (NRS 90)

- Investments (NRS 104 Art. 8)
- Deceptive Trade Practices (NRS 598)
- Trademarks (NRS 600A)

- Enhanced Case Mgmt/Business
- Other Business Court Matters

10/30/2008

Date

Signature of initiating party or representative

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2008 OCT. 30 P 6:11

[Signature]
CLERK OF THE COURT

1 MUELLER, HINDS & ASSOCIATES
2 CRAIG A. MUELLER, ESQ.
3 Nevada Bar No. 4703
4 600 S. Eighth Street
5 Las Vegas, Nevada 89101
6 Attorney for Defendant
7 BOB BEERS

8 EIGHTH JUDICIAL DISTRICT LAS VEGAS DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 BOB BEERS,

11 Plaintiff,

12 vs.

13 ALLISON COPENING, personally; and
14 NEVADA DEMOCRATIC PARTY,

15 Defendants.

Case No.

Dept. No.

COMPLAINT

16
17 COMES NOW Plaintiff BOB BEERS, by and through his attorney, CRAIG A. MUELLER,
18 ESQ., of the law firm MUELLER, HINDS & ASSOCIATES, and files this Complaint. BOB BEERS
19 alleges as follows:

- 20 1. At all material times Plaintiff was a resident of the State of Nevada.
- 21 2. At all material times Defendants were residents of the State of Nevada.
- 22 3. At this time Plaintiff is the Republican Party's candidate for State Senator, District 6.
- 23 4. At this time Defendant, Allison Copening, is the Democratic Party's candidate for State
24 Senator, District 6.
- 25 5. On or about October 29, 2008, Defendants mailed a political advertisement containing
26 libelous statements against Plaintiff. Those statements indicated that Plaintiff was "Under
27
28

1 Ethics Commission Review" allegedly for actions as a candidate for Senator. A copy of
2 the 2-page advertisement Plaintiff complains of is attached as Exhibit 1.

- 3 6. Plaintiff was never under investigation by the Nevada Ethics Commission for any actions
4 during any relevant period of time in question.
- 5 7. The Defendants' advertisement was mailed to possibly thousands of Nevada residents at a
6 very pivotal point in the election campaign—during the last few days of campaigning.
- 7 8. The Defendants' knowing the ethical complaint was nonexistent, and after Plaintiff
8 informed them of this matter, continued to mail out the libelous political advertisements.
- 9 9. Defendants' actions show actual malice since both Defendants had actual knowledge of the
10 falsity of their claim, but proceeded to mail out the libelous advertisement anyway.

11
12
13 **MEMORANDUM AND POINTS OF AUTHORITIES**

14
15 Bob Beers is running for State Senator, District 6. His democratic rival, Allison Copenig and
16 the Nevada Democratic Party, recently mailed out a libelous political advertisement stating that Mr.
17 Beers is "under Ethics Commission Review" by the State of Nevada Ethics Committee. As it turns
18 out, there was no ethics complaint ever filed against Mr. Beers that the advertisement mentions. This
19 was a pitiful attempt to sway the election her way during the last few pivotal days of campaigning.
20 Knowing the ethical complaint was nonexistent, Copenig acted with actual malice toward Mr. Beers
21 and at his expense.

22
23
24 ~~The reason for mailing the flyer in question was so that Copenig could gain an advertising~~
25 ~~advantage in order to 'sling mud' at Mr. Beers. Using this 'fake' ethics complaint, Copenig then said~~
26 ~~that Mr. Beers has an active ethical investigation pending against him. This was disclosed to the~~
27 ~~public in the literature prepared by Copenig's party, in direct contradiction of the truth.~~
28

1 Mr. Beers even informed Copenig that the allegations were false, but she proceeded to
2 publish the false material anyway. The allegation that Mr. Beers is "Under Ethics Commission
3 review" was intentionally libelous being an outright lie to the residents of Nevada.
4

5 ARGUMENT

6 **I. Mr. Beers' Character was Defamed by a Libelous Political Advertisement 7 Put Forth by Allison Copenig and the Nevada .**

8 Mr. Beers was clearly defamed by Copenig. The benchmark case for defamation, whether it
9 be libel or slander, is *New York Times Co. v. Sullivan*, 376 US 254, 86 S.Ct. 710 (1964). In it, the
10 Supreme Court of the United States established the rule that the federal constitutional guaranty of
11 freedom of speech and press prohibits a public official from recovering damages for a defamatory
12 falsehood relating to his official conduct unless he proves that the statement was made with "actual
13 malice," that is, with *knowledge that it was false* or with reckless disregard of whether it was false or
14 not (emphasis added).
15

16 By issuing a political advertisement that stated Mr. Beers was "Under Ethics Commission
17 Review" (Exhibit "1") and knowing this was false, Copenig acted with actual malice by intentionally
18 and willfully defaming Mr. Beers. She acted with actual malice and reckless disregard by knowing
19 first hand that the accusation was blatantly false since there was no actual ethics commission review
20 of Mr. Beers activities whether recently or in the past. Additionally, by placing the advertisement in
21 the mail system and sending the pamphlet to possibly thousands of residents, there was
22
23
24 communication to many, many third parties.

25 The United States Supreme Court in *St. Amant v. Thompson*, 390 US 727, 88 S.Ct. 1323
26 (1968) further explained the standard for actual malice. The court stated that the phrase "reckless
27 disregard" of falsity of the defamatory statement cannot be fully encompassed in one single definition
28

1 and inevitably its outer limits will be marked out by case-to-case adjudication. *Id.* at 731, 88 S.Ct.
2 1325. The court further pointed out that in a defamation action by a public official, the defendant
3 cannot automatically insure a favorable verdict by testifying that she published with a belief that the
4 statements were true. The finder of fact must determine whether the publication was made in good
5 faith, and that professions of good faith would be unlikely to prove persuasive, for example, where a
6 story is fabricated by the defendant or is the product of his imagination. *Id.* at 732, 88 S.Ct. 1326.
7

8 These facts are on point with the false allegations against Mr. Beers. In order to persuade
9 undecided voters in the final days of the campaign, Copening made up an entirely fabricated story that
10 was the product of her imagination. It being a product of her imagination, she had direct knowledge
11 of its falsity, yet she mailed the advertisement anyway. When someone mails a political
12 advertisement, knowing that the allegations are made up and knowing the content of the advertisement
13 is injurious, actual malice is proven. Once again, there was *no* ethical commission review of any of
14 Mr. Beers' activities—this was a false, fabricated story.
15

16 Since there was no ethics complaint to speak of, Copening fabricated the entire 'ethics
17 complaint' advertisement. This combined with her immediate disbursal and timing of the voting
18 advertisement logically shows that she intended to hurt Mr. Beers' reputation so badly that those who
19 were in favor of Mr. Beers would have doubt in their minds and hopefully vote for her. This
20 molestation of the ethical safeguards and laws in place to protect against this deviant behavior is
21 undoubtedly politics at its worst.
22
23
24

1 **II. Allison Copening Had First Hand Knowledge of the Falsity of the Ethics**
2 **Commission claim and Acted with Actual Malice in Mailing the**
3 **Advertisement.**

4 Actual malice is defined in the Nevada Revised Statute at 41.332 and defines actual malice as
5 a "state of mind arising from hatred or ill will toward the plaintiff and does not include that state of
6 mind occasioned by a good faith belief in the truth of the publication or broadcast." By conjuring up
7 the ethical complaint advertisement and passing it off as true, Copening knew of the fabrications made
8 concerning Mr. Beers and thus, acted with actual malice when she placed it into the mail system and
9 immediately mailed the defamatory material. Copening also showed reckless disregard of the truth of
10 the matter since Mr. Beers informed her of the blatantly false allegation to which she was referring.
11 However, after knowing the allegations were false Copening mailed the advertisements anyway.

12 To satisfy the actual malice standard for a defamation claim, the public official or figure must
13 establish only by clear and convincing evidence that the defendant published the defamatory
14 statements with knowledge that it was false or with reckless disregard of whether it was false. (See
15 *New York Times, Co. v. Sullivan*, 376 US 254, 86 S Ct 710 (1964), *Restatement (Second) of Torts* §
16 580A). Reckless disregard in this context refers to the publishing of defamatory statements with a
17 high degree of awareness of their probable falsity or serious doubts as to the truth of the publication.
18 Furthermore, when a court determines whether a defendant knew of or recklessly disregarded possible
19 falsity it must look to the defendant's subjective state of mind. *Bose Corp. v. Consumers Union of*
20 *U.S., Inc.*, 466 U.S. 485, 511, 104 S.Ct. 1949 (1984).

21 Copenings subjective state of mind can be easily and logically inferred considering she is in a
22 heated and Senate race. Both candidates have spent countless hours, sweat and dollars campaigning
23 against one another and investigating their every move. Copening made knowingly false allegations
24

1 in her political advertisement critical of Mr. Beers for the sole reason to use it in her political
2 campaign as ammunition against him. Copenig knew not just of the high degree of probable falsity
3 but she had actual knowledge from Mr. Beers himself concerning the false allegation to which she
4 published her advertisement. There is no higher standard of actual malice which can be proven.
5 Copenig knew there was no Ethics Commission Review of Mr. Beers, not just from her own
6 knowledge but from Mr. Beers himself. Simply stated Copenig knew of the completely false
7 allegation, but published it anyway in order to injure the reputation of Mr. Beers so that she could gain
8 favor of the voters at any cost.
9
10

11 This false information was disseminated to the public so quickly and at a pivotal period in the
12 race that it seems as if she had this scheme premeditated. Copenig disclosed to no one that in fact
13 that there was no such Ethics Commission review. This makes a clear and convincing case that
14 Copenig acted with actual malice regarding her false statements in a political advertisement to the
15 residents of Nevada. Copenig has been well funded by her constituents and represents them
16 accordingly. However, filing a false ethics complaint just to gain more ammunition in the mud
17 slinging contest is appalling.
18
19

20 The United States Supreme Court has also stated that a "plaintiff is entitled to prove a
21 defendant's state of mind through circumstantial evidence." *Harte-Hanks Communications Inc. v.*
22 *Connaughton*, 491 U.S. 657, 668, 109 S.Ct. 2678 (1989). This can be accomplished by showing the
23 cumulative factors of negligence, motive, and intent. As stated above, Copenig definitely had a
24 motive to libel Mr. Beers, seeing how they are both running for the same Senate seat. That she was
25 negligent in failing to conduct any research whatsoever concerning the falsity of her advertisement.
26
27
28

1 And finally, Copenig's intent to libel Mr. Beers can be shown by her knowing the accusation was
2 false but mailing the advertisement anyway.

3 The *Harte-Hanks* case concerns circumstantial evidence that a newspaper had a motive to
4 publish a libelous article about a judicial candidate which it did not endorse. The Supreme Court
5 stated that the newspaper did have a motive in the reelection of the opposing candidate, who it had
6 endorsed, but the Court also based its finding of malice on other strong evidence that the newspaper's
7 witness was not reliable and the newspaper had intentionally avoided taking action that would have
8 either confirmed or dispelled any doubts about the story's truthfulness. *Id.* 692-93, 109 S.Ct. 2678.
9

10 In Mr. Beers' case, the fake ethical complaint stated in Copenig's advertisement was
11 knowingly and intentionally false as Mr. Beers had no Ethics Commission action pending against him.
12 The advertisement is not only totally unreliable but also completely fabricated. Additionally, no
13 research was conducted concerning the absence of truth in the flyer or the blatant disregard of its
14 falsity. Even though Mr. Beers is a public figure, he still has his right not to be defamed as an
15 individual citizen under the Constitution of the United States.
16
17

18 CAUSES OF ACTION

19 Plaintiff has causes of action under the following categories:
20

- 21 1) Defamation. Plaintiff was defamed by the Defendants when they printed and mailed to
22 Nevada residents a political advertisement stating that Plaintiff was "Under Ethics
23 Commission Review" when there was no such Ethics Commission review of Plaintiff.
24
- 25 2) Libel. Plaintiff was libeled by the Defendants when they printed and mailed to Nevada
26 residents a political advertisement stating that Plaintiff was "Under Ethics Commission
27 Review" when there was no such Ethics Commission review of Plaintiff.
28

1 3) Slander. Plaintiff was slandered by the Defendants when they advertised on television that
2 Plaintiff was "Under Ethics Commission Review" when there was no such Ethics
3 Commission review of Plaintiff.
4

5 **CONCLUSION**

6 As the facts above show, there is obviously no evidence against Mr. Beers of any ethical
7 violation, as such, Mr. Beers was clearly defamed. The libelous advertisement was mailed knowing of
8 its falsity and no research was conducted in any regard to the mailing. Actual malice, meaning
9 knowledge that the advertisement was false or with reckless disregard of whether it was false or not, is
10 clearly proven by the facts above.
11

12
13
14 Dated this ___ day of October, 2008

MUELLER, HINDS, & ASSOCIATES, CHTD

15
16 By _____
17 CRAIG A. MUELLER, ESQ.
18 Nevada Bar No. 4703
19 600 S. Eighth Street
20 Las Vegas, Nevada 89101
21 Attorney for Plaintiff
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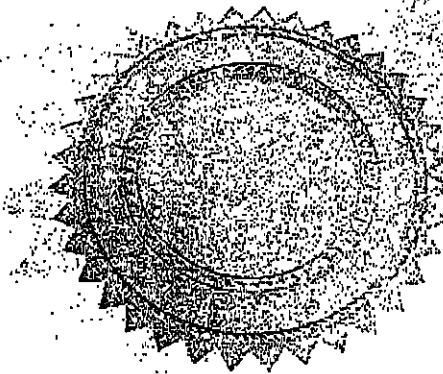
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day of _____, 2008.

By _____
DISTRICT ATTORNEY'S OFFICE

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EXHIBIT 1

**Nevada Commissioner of the
State Insurance Division**



**A Report on Changes That
"Will Devastate The Health
Insurance Market."**

State Senator Bob Beers Deregu Got His Cronies Out of Millic

LAS VEGAS SUN

RUSHED LAW THREATENS REGULAT

*"Late-session fix for Beers' former compo
could undo state oversight of health insur*
Las Vegas Su

At the same time, he got
fines and back taxes.

In today's economy when
is headed in the wrong d
deregulation.

Nevada's Commissioner
called the move "potenti
the move "will devastate

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Lated Nevada's Health Care and ns in Fines and Back Taxes.*



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8/20/04

In the closing days of the 2008 legislative session, State Senator Bob Beers helped his former employer by deregulating a swath of Nevada's health insurers market.

Under Ethics
Commission
Review!!!

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he it seems that everything
irection, we don't need more

of the State Insurance Division,
ally disastrous" and said that
the health insurance market."*



alBeers.com

/oct/05/rushed-law-threatens-regulation

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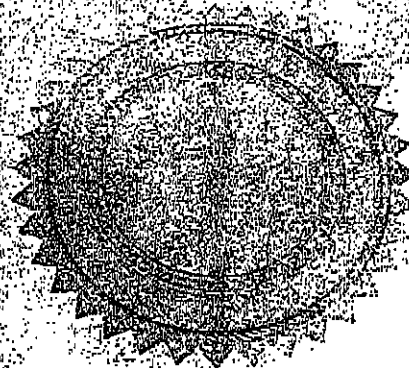
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Nevada Commissioner of the State Insurance Division



**A Report on Changes That
"Will Devastate The Health
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