

# Paul Larson

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09 October 2019

Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

Subj: OAH No. 2019030096  
FPPC Case No. 15/003  
Fair Political Practices Commission v. Susan G. Shelley

Dear Sir or Madam:

Susan Shelley does not know me, and I only know her through reading her weekly editorials. Her op-ed titled “No wonder good people don’t run for office in California” provided links to documents in the subject docket and relayed at a recent FPPC meeting “the commissioners expressed a desire to expand opportunities for the public to comment on items that are on the commission’s agenda.” I was interested enough to peruse the docket and I am interested enough to provide comments to the Commission.

I have a 21 year federal law enforcement career, much of which involved presenting cases before Administrative Law Judges. Years after I retired regulations were re-written and case presentation before ALJ’s became more formalized, including now a requirement that prosecutors be lawyers – I was not/am not a lawyer.

My former service now resolves most cases by a negotiated settlement and only about 3% of cases filed end up being prosecuted before an ALJ.<sup>1</sup>

What struck a chord between Ms. Shelley’s case and the evolving practice of my former service is seemingly extreme efforts by the enforcers to achieve a negotiated settlement. The process is arduous and expensive. In administrative proceeding as this Respondents are on their own and, as with civil suits, pay for their representation or represent themselves. Ms. Shelley persevered and represented herself throughout (and has perhaps recently been assisted by the Howard Jarvis Taxpayers Association). As with my former service and, I suspect, as with FPPC cases, most respondents simply surrender to the process and agree to a lesser negotiated settlement than risk losing, after an expensive defense, and paying more.

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<sup>1</sup> *Over the past ten years nation-wide approximately 133 cases have resulted in hearings before ALJ’s. During my federal career I was prosecutor in over 250 hearings before five different ALJ’s. Now there are only five ALJ’s in the agency.*

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The subject matter is not a “did she or did she not do it” question. Ms. Shelly has admitted to being late in filing pre-election campaign statements and failing to report what seems to be two separate loans from herself to her campaign and a Howard Jarvis Taxpayers Association contribution.

California Government Code section 83116 sets forth six factors to be considered by the ALJ and Commission. I want to address the third:

Whether the violation was deliberate, negligent or inadvertent

Ms. Shelly has been deemed negligent. I believe this is too harsh. Her actions (or inactions) were inadvertent.

Negligent (or negligence) is not defined in FPPC regulations. A Google search of negligence in California Regulations had, as its first hit, California Code, Civil Code - CIV § 1714, copied as follows:

(a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself....

The two things I take from this are “willful acts” and “want of ordinary care or skill.” In my view the former is choosing an action (or inaction) among two or more alternatives, whereas the latter connotes a consequence resulting from a lack of ordinary (average) care or skill. Regarding my former career as a prosecutor of cases before an ALJ, the regulatory definition of negligence was (and remains) as follows:

Negligence is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

In one of the Negligence cases I prosecuted the ALJ, from the bench upon completion of closing arguments, defined his interpretation of a “reasonable and prudent person.” The Judge explained this by taking 100 persons whose line of work or endeavor is in the same field (*i.e.*, of the same station, under the same circumstances) as that of the Respondent, and having the 100 persons stand in a line sorted by order of their talents, skills and abilities. The person at one end of the

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line would be the best of the 100, at the opposite end the person would be the worst or least skilled of the 100, and in the middle would be the average person. The Judge explained this average person is the “reasonable and prudent person” who sets the benchmark for determining whether the Respondent’s acts or omissions amounted to negligence.

While undisputed Ms. Shelly was in violation, I believe her acts/omissions were unintended and that her efforts comported with the actions of a reasonable and prudent person. She studied requirements on her own and she sought help from staff personnel. This seems to have been diligent research. The requirements, it appears, are not straightforward. Had the average first-time candidate person of the same station/circumstances as Ms. Shelly been able to figure out the various campaign filing requirements and deadlines the FPPC would not have needed to develop the Online Candidate Toolkit and, had the toolkit been available to Ms. Shelly, there would be no FPPC Case No. 15/003.

Perhaps the best argument that campaign filing requirements and deadlines were, in the pre-Online Candidate Toolkit era, too complicated for a reasonable and prudent person to understand is Mr. Dan Schnur’s 2014 campaign for Secretary of State. Reportedly he donated \$125,000 of his own money to his committee to cover debts and, like Ms. Shelly, failed to file a “\$5,000 report” disclosing the contribution. Unlike Ms. Shelly who had no prior experience with FPPC requirements, Mr. Schnur was a former chairman of the FPPC.

I did not read anything that was illegal about Ms. Shelly’s campaign funding other than missed deadlines/missed reporting. It would be a different scenario if there happened to be misappropriation or money-handling malfeasance. In cases as Ms. Shelly’s, particularly as she was a first-time candidate, I would rather see FPPC educate and warn, and reallocate time spent on prosecution of cases as Ms. Shelly’s to the more serious cases which truly affect the integrity of the election process.

I believe the monetary penalty against Ms. Shelley should be set aside and that the sanction be reduced to a warning. It is important that a warning be recorded, this because if Ms. Shelly ever chooses to run for office again her record would be relevant were she to, again, miss filing deadlines and requirements.

Respectfully submitted,

PAUL J. LARSON

cc: Susan@SusanShelley.com