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October 23, 2018

Washington State Bar Association
Lawyer Discipline Officer/Committee

Re: Bar Complaint against Robert M. McKenna

To Whom It May Concern:

I am filing this grievance against attorney Robert M. McKenna on behalf of myself and Washingtonians for Ethical Government, a Washington not-for-profit corporation. As described herein, Mr. McKenna has committed multiple violations of the Rules of Professional Conduct (RPC) through concealing his client and professional interest in a television ad attacking State Initiative 1631 (I-1631). That commercial is currently airing on multiple broadcast stations.

Mr. McKenna is an attorney in private practice at the firm of Orrick, Herrington & Sutcliffe LLP in Seattle, WA. His WSBA license number is 18327.

In his television ad, Mr. McKenna seeks to misrepresent himself to voters by invoking his tenure as Attorney General: "As Attorney General, consumer protection was my top priority—that's why I'm speaking out against Initiative 1631." In reality, Mr. McKenna has not served as Attorney General for more than 5 years, and currently serves as an attorney representing Chevron Corporation. Chevron is part of a large oil-company coalition, which has spent more than \$25 million trying to defeat I-1631—including \$500,000 directly from Chevron to pay for the very television ad in question.


Mr. McKenna's statements constitute violations of RPC 4.3, RPC 7.1, and RPC 8.4.

The material facts supporting this grievance are as follows:

1. According to [his own LinkedIn profile](#): "McKenna is now a partner in the global law firm of Orrick, Herrington & Sutcliffe, where he represents clients such as ... Chevron." (Exhibit 1)

https://www.linkedin.com/in/robmckenna

LinkedIn



Rob McKenna 500+ connections

Partner at Orrick, Herrington & Sutcliffe LLP
Seattle, Washington | Law Practice

Current Orrick, Herrington & Sutcliffe LLP
Previous Washington State Office of the Attorney General, Metropolitan King County Council

Education University of Chicago Law School
Websites Company Website, Facebook

View Rob McKenna's full profile. It's free!

Your colleagues, classmates, and 500 million other professionals are on LinkedIn.

View Rob's Full Profile

Summary

The son of a career Army soldier and a schoolteacher, Rob grew up in spots around the globe before his family chose to settle in Bellevue because of its quality schools. A University of Washington graduate, where he served as student body president, he earned his law degree at the University of Chicago. Following law school, began practicing law at Perkins Coie in Bellevue and became involved in a variety of community and civic activities and leadership positions. His four children grew up in Bellevue; three of them are launched in careers including law, non-profit fundraising, and corporate finance, and the youngest is enrolled in college at NYU in the Tisch School for the Arts.

Rob began his public service career in 1995, running and winning a seat on the King County Council. He was re-elected twice. In 2004 he won his first race for Attorney General and was re-elected in 2008 with 59.5% of the vote. He became a recognized national leader on many issues, including the fight to protect homeowners who are victims of mortgage fraud, and his counterparts around the country elected him President of the National Association of Attorneys General, while honoring him as America's "Outstanding Attorney General" in 2011.

McKenna is now a partner in the global law firm of Orrick, Herrington & Sutcliffe, where he co-chairs the Public Policy Group, and he represents clients such as Microsoft, T-Mobile, BNSF Railway, and Chevron.

2. Chevron is a “major contributor” to the opposition campaign that paid for the ad, [including a direct contribution of \\$500,000](#) to the campaign. ([Source](#))

Melissa Santos @MelissaSantos1

Following

Replying to @Ashkixia @WAPolicyGreen

Chevron has also spent \$500K opposing I-1631 here in Washington state.

Contributor name contains Chevron

Search Clear

Largest total contribution by source matching "Chevron"

Amounts shown are aggregate totals of cash and in-kind contributions.

NAME	CITY	STATE
CHEVRON U.S.A. INC.	SAN RANCHO	CA

Cash/In-kind Cash

4:18 AM - 16 Oct 2018 from Seattle, WA

Environment | Local Politics | Northwest

Oil company money keeps rolling in to campaign to defeat Washington state carbon fee

Originally published September 19, 2018 at 5:05 pm | Updated September 19, 2018 at 5:21 pm

Phillips 66, which operates a Washington refinery, is the top contributor to the campaign against Initiative 1631.

By Seattle Times staff

Share story

The oil company Phillips 66 has contributed an additional \$3.5 million to defeat a statewide ballot measure, Initiative 1631, that would impose a carbon-pollution fee on fossil-fuel emissions.

That brings the corporation's total contributions to the opposition campaign to \$7.2 million — almost half of the No on 1631 fundraising that on Wednesday totaled \$16 million.

3. McKenna appears in the ad directly identifying himself as an Attorney General and consumer advocate, while making no mention of the fact he legally and financially acts on behalf of Chevron, whose interests he is also ethically obligated to represent. ([Source](#))



4. Extremely tellingly, the aforementioned reference to Mr. McKenna’s representation of Chevron on his LinkedIn page (@1) was removed from his profile shortly before the ad first aired. [McKenna personally acknowledged this in a Twitter exchange](#) (screenshot attached) with a pro-I-1631 advocate. McKenna subsequently restored his representation of Chevron only after his public rebuke on social media. This sequence of events strongly suggests that McKenna didn’t simply just casually delete his legal representation of Chevron, but that he actively attempted to conceal it.



These facts, and the behaviors they describe, constitute multiple violations of both the spirit and the letter of the Rules of Professional Conduct:

RPC 7.1 states that, “A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or *omits a fact* necessary to make the statement considered as a whole not materially misleading.” By omitting that fact that he is paid to represent the interests of Chevron, a literal funder of the ad in question, while presenting himself as protecting the interests of consumers, McKenna makes a “misleading communication” as defined in RPC 7.1.

RPC 4.3 states that, “In dealing on behalf of a client with a person who is not represented by a lawyer, a lawyer shall not state or imply that the lawyer is disinterested.” Mr. McKenna’s statements in the ad clearly imply that he is disinterested in anything beyond acting as a consumer advocate for an uninformed voter making their decision on I-1631—which is at odds with his obligation to represent the interests of his client, Chevron.

RPC 4.3 further states that, “When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.” Rather than making a reasonable effort to correct any potential misunderstanding about his “role in the matter,” the action of removing reference to his representation of Chevron from his LinkedIn profile shortly before the ad aired demonstrates McKenna intended to *promote*, not “correct,” any possible misunderstanding.

RPC 4.3 Comment [1] states that “In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer’s client and, where necessary, explain that the client has interests opposed to those of the unrepresented person.” At no point does Mr. McKenna identify his client or his client’s interests. Quite the opposite.

RPC 8.4 states that “It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct,” and “(c)” engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Mr. McKenna’s actions described above qualify as misconduct under both RPC 8.4 (a) and (c).

In summary, Mr. McKenna violated his ethical duties when he publicly stated that he was speaking out as a consumer advocate, when he actually was representing the interests of his client Chevron, a major political and financial opponent of I-1631.

We ask the WSBA to review this matter immediately and enact disciplinary measures in accordance with its high standards for the professional conduct of its members.

Very truly yours,

SMITH & LOWNEY, PLLC

By: s/Knoll Lowney
Knoll Lowney

Cc: Washingtonians for Ethical Government