

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

January 15, 2009

[Cite as *01/15/2009 Case Announcements, 2009-Ohio-113.*]

MISCELLANEOUS ORDERS

BEFORE THE COMMISSION OF FIVE JUDGES APPOINTED BY THE SUPREME COURT OF OHIO

In re Judicial Campaign Complaint
Against Fred Beery

Case No. 2008-2235

OPINION

This matter came to be reviewed by a commission of five judges appointed by the Supreme Court of Ohio on November 26, 2008 pursuant to Gov.Jud.R. II(5)(E)(1) and R.C. 2701.11. The commission members are Judges Frederick Hany, chair; Jeffrey Froelich; Daniel Hogan; R. Scott Krichbaum; and Mary Jane Trapp.

Two formal complaints were filed against respondent, Fred Beery (Attorney Registration No. 0023286). Complaint No. 08-J-05, filed on October 29, 2008, alleged violations of Canons 7(B)(2)(f) and (E)(1) of the Code of Judicial Conduct in relation to a radio advertisement broadcast by respondent that included a statement claiming that the complainant, Judge Rocky Coss, “got appointed by the political bosses in Columbus.” Complaint No. 08-J-06, filed on November 5, 2008, alleged violations of the same provisions of Canon 7 relative to campaign communications that were broadcast on the radio and distributed by mail in which respondent knowingly made false and misleading statements regarding the complainant’s role, as a county prosecutor, in plea bargaining a felony charge involving allegations that the defendant raped a minor child.

The formal complaints were heard by a panel of the Board of Commissioners on Grievances and Discipline (board) on November 12, 2008, and the hearing panel issued a Report of Findings and Recommendations on November 18, 2008. In the report, the hearing panel found the respondent violated Canons 7(B)(2)(f) and 7(E)(1) with respect to the broadcast and dissemination of the campaign communications identified in the formal complaints. In light of these violations, the hearing panel recommended that the respondent receive a six-month stayed suspension from the practice of law, be required to pay a fine of \$7,500.00 and the costs of the proceeding, and pay the complainant's reasonable and necessary attorney fees in bringing the grievance and prosecuting the formal complaint.

The parties agreed to have the matter considered by this commission based on the record and hearing panel report certified by the secretary of the board and submitted a joint stipulation relative to the attorney fees incurred by the complainant. On December 12, 2008, this commission issued an order in which it invited the parties to submit briefs on the question of whether respondent, if found to have violated Canon 7 of the Code of Judicial Conduct, should be required to correct publicly any improper statements contained in his prior campaign communications. Each party submitted a brief in which newspaper reports of the pending disciplinary proceedings against respondent were cited in support of the position that the public was fully aware and had been informed of the inaccuracies contained in respondent's campaign communications.

This commission convened by telephone conference on January 6, 2009 to review this matter. Upon consideration, the commission agrees with the conclusion of the hearing panel and independently finds the existence of clear and convincing evidence that respondent violated Canons 7(B)(2)(f) and (E)(1) through the dissemination of the campaign communications in cited in the formal complaints.

This commission also agrees with the sanctions recommended by the hearing panel. As noted by prior commissions, the processes that exist for adjudicating judicial campaign complaints serve multiple purposes: punish behavior that is contrary to the Code of Judicial Conduct, inform the legal and judicial communities of the appropriate standards governing judicial campaign conduct, and deter similar violations by judicial candidates in future elections. See *In re Judicial Campaign Complaint Against Morris* (1997), 81 Ohio Misc.2d 64, *In re Judicial Campaign Complaint Against Burick* (1999), 95 Ohio Misc.2d 1, and *In re Judicial Campaign Complaint Against Brigner* (2000), 89 Ohio St.3d 1460. These processes serve the additional purposes of informing the public of the self-regulating nature of the legal profession and enhancing public confidence in the integrity of the proceedings. The sanctions recommended in this instance serve

these purposes and again underscore the responsibility of all judicial candidates to conduct their campaigns with the same degree of honesty, dignity, and respect that, if elected, they would expect to receive from lawyers, litigants, and other members of the public.

We hereby adopt, in all respects, the Report of Findings and Recommendations issued by the hearing panel on November 18, 2008 and include a copy of that report as an appendix to this order. We order the imposition of a six-month suspension from the practice of law, with the suspension stayed on the condition of payment of the monetary sanctions set forth in this order and no future violations of the Ohio Code of Judicial Conduct or the Ohio Rules of Professional Conduct. We further order the payment of a fine of \$7,500.00, assess to respondent the costs of these proceedings, and order respondent to pay the complainant's reasonable and necessary attorney fees in bringing these grievances and prosecuting the formal complaints. We find that the amount of complainant's attorney fees to which the parties have stipulated to be reasonable and necessary and order the respondent pay \$6,000.00 to complainant within sixty days of the date of this order. Complainant shall provide the secretary of this commission with written certification of payment of the attorney fees.

The secretary of this commission shall issue a statement of costs before this commission and instructions regarding the payment of the fine and costs. This opinion shall be published by the Supreme Court Reporter in the manner prescribed by Gov.Bar R. V(8)(D)(2).

So Ordered.

/s/ Frederick Hany
Judge Frederick Hany, Chair

/s/ Jeffrey Froelich
Judge Jeffrey Froelich

/s/ R. Scott Krichbaum
Judge R. Scott Krichbaum

/s/ Daniel Hogan
Judge Daniel Hogan

/s/ Mary Jane Trapp
Judge Mary Jane Trapp

Dated: January 15, 2009