

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

April 19, 2012

[Cite as *04/19/2012 Case Announcements*, 2012-Ohio-1720.]

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## MOTION AND PROCEDURAL RULINGS

### **2011-0899. Ruther v. Kaiser.**

Warren App. No. CA201007066, 2011-Ohio-1723. This cause is pending before the court as an appeal from the Court of Appeals for Warren County.

Upon consideration of the joint motion of appellants and amicus curiae state of Ohio for divided argument time scheduled for April 25, 2012, it is ordered by the court that the motion is granted and amicus curiae shall share the time allotted to appellants.

### **2011-1536. Beaver Excavating Co. v. Testa.**

Franklin App. No. 10AP-581, 2011-Ohio-3649. This cause is pending before the court as a discretionary appeal and claimed appeal of right.

Upon consideration of the joint motion to schedule oral argument on the same day as case No. 2011-1757, *Ohio Trucking Assn. v. Stickrath*, it is ordered by the court that the motion is granted.

### **2011-1757. Ohio Trucking Assn. v. Stickrath.**

Franklin App. No. 10AP-673, 2011-Ohio-4361. This cause is pending before the court as a discretionary appeal and claimed appeal of right.

Upon consideration of appellant's unopposed motion to schedule oral argument on the same date as case No. 2011-1536, *Beaver Excavating Co. v. Testa*, it is ordered by the court that the motion is granted.

### **2012-0535. Cullen v. State Farm Mut. Auto. Ins. Co.**

Cuyahoga App. No. 95925, 2011-Ohio-6621. This cause is pending before the court as a discretionary appeal and claimed appeal of right.

Upon consideration of the motions for admission pro hac vice of Mark A. Behrens, Robin S. Conrad, and Cary Silverman, it is ordered by the court that the motions are granted. Pursuant to Gov.Bar R. XII(4), counsel shall file a notice of permission to appear pro hac vice with the Supreme Court's Office of Attorney Services within 30 days of the date of this entry.

## **DISCIPLINARY CASES**

### **2012-0621. In re Williams.**

On April 13, 2012, and pursuant to Gov.Bar R. V(5)(A)(3), the secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio certified to the Supreme Court a certified copy of a judgment entry of a felony conviction against Agatha Martin Williams, an attorney licensed to practice law in the state of Ohio.

Upon consideration thereof and pursuant to Gov.Bar R. V(5)(A)(4), it is ordered and decreed that Agatha Martin Williams, Attorney Registration No. 0052652, last known business address in Canton, Ohio, is suspended from the practice of law for an interim period, effective as of the date of this entry.

It is further ordered that this matter is referred to the Stark County Bar Association for investigation and commencement of disciplinary proceedings.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency, or other public authority.

It is further ordered that, effective immediately, respondent is forbidden to counsel or advise or prepare legal instruments for others or in any manner perform legal services for others.

It is further ordered that respondent is divested of each, any, and all of the rights, privileges, and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that before entering into an employment, contractual, or consulting relationship with any attorney or law firm, respondent shall verify that the attorney or law firm has complied with the registration requirements of Gov.Bar R. V(8)(G)(3). If employed pursuant to Gov.Bar R. V(8)(G), respondent shall refrain from direct client contact except as provided in Gov.Bar R. V(8)(G)(1), and from receiving, disbursing, or otherwise handling any client trust funds or property.

It is further ordered that, pursuant to Gov.Bar R. X(3)(G), respondent shall complete one credit hour of continuing legal education for each month or portion of a month of the suspension. As part of the total credit hours of continuing legal

education required by Gov.Bar R. X(3)(G), respondent shall complete one credit hour of instruction related to professional conduct required by Gov.Bar R. X(3)(A)(1) for each six months or portion of six months of the suspension.

It is further ordered that respondent shall not be reinstated to the practice of law in Ohio until (1) respondent complies with the requirements for reinstatement set forth in the Supreme Court Rules for the Government of the Bar of Ohio, (2) respondent complies with this and all other orders issued by this court, (3) respondent complies with the Supreme Court Rules for the Government of the Bar of Ohio, and (4) this court orders respondent reinstated.

It is further ordered by the court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered by the court that if, after the date of this order, the Clients' Security Fund awards any amount against respondent pursuant to Gov.Bar R. VIII(7)(F), respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in respondent's possession or control;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of respondent's disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the clerk of this court and the disciplinary counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of

service of notices required herein, and setting forth the address where the affiant may receive communications; and

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that respondent shall keep the clerk, the Stark County Bar Association, and the disciplinary counsel advised of any change of address where respondent may receive communications.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings. All case documents are subject to Sup.R. 44 through 47, which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

### **MISCELLANEOUS DISMISSALS**

**2011-1880. State ex rel. Robinson-Bond v. Champaign Cty. Bd. of Elections**  
Champaign App. No. 2011-CA-21, 2011-Ohio-6127. This cause is pending before the court as an appeal from the Court of Appeals for Champaign County.

Upon consideration of the joint motion for vacatur, it is ordered by the court that the motion is denied, and the cause is dismissed as moot.

### **MISCELLANEOUS ORDERS**

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

In re Judicial Campaign Complaint  
Against Lilly.

Case No. 2012-0340

### **ORDER OF THE COMMISSION OF JUDGES**

This matter came to be reviewed by a commission of five judges appointed by the Supreme Court of Ohio pursuant to Gov.Jud.R. II(5)(D)(1) and R.C. 2701.11. The commission members are Judge Nancy McDonnell, Chair, Judge John P. Bessey, Judge Joseph M. Houser, Judge Mark Wiest, and Judge Barbara P. Gorman.

On February 6, 2012, the complainant, attorney Jonathan Rosenbaum, filed a complaint with the Board of Commissioners on Grievances and Discipline. The complaint consisted of various pieces of campaign literature used by respondent, Paulette Lilly, prior to the March 6, 2012 primary. Following a review by a probable-cause panel of the board pursuant to Gov.Jud.R. II(5)(B), the board filed a formal complaint alleging in Count I that the respondent, during the course of a judicial campaign, violated the following rules of Canon 4 of the Code of Judicial Conduct: Jud.Cond.R. 4.3(A) (circulating information concerning the judicial candidate, either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that would be deceiving or misleading to a reasonable person); 4.3(C) (using the title of an office not currently held by the judicial candidate); 4.3(D) (use of the term “judge” except in conjunction with the words “elect,” “vote,” or “for”); and 4.3(F) (misrepresenting one’s identity qualifications or present position). In addition, the complaint also alleged in Count II of the complaint that the respondent had violated Jud.Cond.R. 4.1(A)(7) and 4.2(A)(1).

Subsequently, on February 23, 2012, a hearing panel appointed by the Board of Commissioners on Grievances and Discipline conducted a hearing on the allegations contained in the formal complaint. The hearing panel issued its findings of fact, conclusions of law, and recommendation in this matter on February 27, 2012. The hearing panel concluded that the complainant had proven by clear and convincing evidence violations of Jud.Cond.R. 4.3(A), (C), and (F) in Count I of the complaint. The hearing panel did not find that the complainant had similarly proven by clear and convincing evidence a violation of Jud.Cond.R. 4.3(D). The hearing panel also dismissed Count II of the complaint.

The hearing panel recommended that the five-judge commission issue an interim cease-and-desist order and further recommended that the respondent be assessed the costs of these proceedings, the costs of proceedings that were suspended from her 2008 campaign conduct case, and a fine of \$3,000.

On March 1, 2012, the Supreme Court of Ohio appointed a five-judge commission to review the hearing panel’s report pursuant to Gov.Jud.R. II(5)(D)(1). The commission was provided with the record certified by the Board of Commissioners on Grievances and Discipline, a complete transcript of the February 23, 2012 proceeding before the hearing panel, and the exhibits presented at that hearing.

This commission issued a cease-and-desist order on March 2, 2012, ordering the respondent to immediately and permanently cease and desist from using campaign materials and displaying billboards or other signage using the phrase “Return Paulette Lilly” or depicting her in a judicial robe without qualification. The respondent filed an affidavit of compliance with the cease-and-desist order on March 5, 2012. The full commission met by telephone conference on March 1 and March 27, 2012. The respondent filed objections, and the complainant filed an answer brief.

Pursuant to Gov.Jud.R. II(5)(D)(1), we are charged with reviewing the record to determine whether it supports the findings of the panel and that there has been no abuse of discretion. A majority of the commission holds that the record does support the findings of the hearing panel that the respondent violated Jud.Cond.R. 4.3 (A), (C), and (F).

### ***Discussion***

The respondent was previously found in 2008 to have violated, inter alia, former Canons 7(D)(3) and 7(D)(1) because the cumulative effect of all of her campaign communications, including the use of the word “reelect” and a photograph of her in a judicial robe, created a false impression that she was currently a judge or could deceive or mislead reasonable persons. *In re Judicial Campaign Against Lilly*, 117 Ohio St.3d 1467, 2008-Ohio-1846. The five-judge commission found that the appearance of the respondent in a judicial robe was “somewhat questionable given that she does not presently serve as a judicial officer.” The use of the judicial robe by the respondent in campaign literature, along with her other campaign materials, created a false impression of incumbency. The respondent was sanctioned by the commission for her misconduct.

Four years later, the 2012 complaint alleges similar conduct on the part of the respondent based primarily on the cumulative effect of her campaign materials. In many instances, the fact pattern in the 2008 case mirrors the conduct of the respondent in the present case. Several of the respondent’s 2012 campaign materials were introduced into evidence during the panel hearing. For example, the panel reviewed a direct mailer used by the respondent. One side of the exhibit contains the phrase “Return Paulette Lilly” with the words “12 years’ experience as a Domestic Relations Judge,” but with no explanation that she is not currently a sitting judge. A photograph with the respondent in a judicial robe is included on one side of the exhibit. The exhibit also uses the word “former” as an adjective to other positions she no longer holds, such as social worker and chief counsel, but omits a similar adjective to describe her previous judicial experience. Another example is an exhibit admitted at hearing of a billboard containing the phrase “Return Paulette Lilly for Judge.” Likewise, the billboard lacks any explanation

that she is not currently a judge. In limited instances, some of the respondent's campaign literature, when considered alone, does convey that she is not an incumbent judge. However, when reviewed in its totality, the admitted evidence clearly demonstrates violations of Jud.Cond.R. 4.3(A), (C), and (F). The commission agrees with the hearing panel that a reasonable person could be confused or misled by the campaign literature, especially if the materials are not carefully reviewed.

During its review, the commission was troubled by the characterization by the respondent at the hearing and in her objections of her direct communications with Richard A. Dove, secretary to the Commission on Grievances and Discipline, concerning her campaign materials. The evidence at the hearing reveals that the respondent was clearly put on notice by Dove that her campaign material could be misleading. Any suggestion by the respondent that Dove implicitly approved the campaign materials at issue is disingenuous and misleading and only serves to underscore the respondent's failure to comply with the canons at issue.

Despite the most recent communication she received from Dove concerning her campaign literature and the findings in the 2008 case before a five-judge commission, the respondent distributed and displayed a coordinated series of campaign literature and advertisements for her campaign that was either knowingly false or was made with a reckless disregard for whether or not it was false, or if true would deceive or mislead a reasonable person, in violation of Jud.Cond.R. 4.3(A). Like the 2008 case, the record in this case presents clear and convincing evidence that the respondent was aware that the cumulative effect of her campaign literature would likely lead voters to conclude that she was a sitting judge. For the second time in less than five years, the respondent's use of literature displaying a photograph in a judicial robe, without any qualification that she is not currently a judge, is the root cause of a judicial canon violation.

Lastly, the commission agrees with the hearing panel that the respondent's use of the word "judge," in many instances without further explanation, implies that she currently holds the office, in violation of Jud.Cond.R. 4.3(C). The commission also agrees that the use of the word "judge," coupled with a photograph of the respondent wearing a judicial robe in some campaign literature, leads to a clear misrepresentation of the respondent's current position, in violation of Jud.Cond.R. 4.3(D).

***Sanction.***

The hearing panel recommended that we issue an interim cease-and-desist order, a public reprimand, and an order that the respondent pay the costs of these proceedings, the costs of the proceedings that were stayed in 2008, and a \$3,000 fine. We believe that the disciplinary sanction recommended by the hearing panel is warranted in this matter and conclude that a public reprimand is appropriate

since the candidate has violated similar canons on two separate occasions over the course of two campaigns.

We also believe that the respondent's failure to avoid the same conduct exhibited in 2008 warrants the imposition of a fine. Therefore, the commission concludes that the respondent should be fined \$1,000 and ordered to pay the costs of these proceedings.

The five-judge commission in the 2008 case ordered the respondent to pay the costs of the proceedings, but suspended the costs on the condition that the respondent had no future campaign-conduct violations. Due to the violations of rules in the case before us, the hearing panel recommended, and the commission agrees, that the respondent be ordered to now pay the costs from the 2008 case in the amount of \$1,349.36.

The secretary shall issue instructions regarding payment of the monetary sanctions. Payment of all monetary sanctions shall be made on or before June 15, 2012. The respondent's public reprimand shall be published by the Supreme Court Reporter of Decisions in the manner prescribed in Gov.Bar R. V(8)(D)(2).

***Conclusion***

The hearing panel's finding that the respondent violated Jud.Cond.R. 4.3 (A), (C), and (F) is supported by the record. The hearing panel did not abuse its discretion by either its findings or recommendations to this commission.

**So ordered.**

/s/ **Nancy McDonnell**  
Judge Nancy McDonnell  
/s/ **John P. Bessey**  
Judge John P. Bessey  
/s/ **Mark Wiest**  
Judge Mark Wiest  
/s/ **Barbara Gorman**  
Judge Barbara Gorman

***Dissent***

I disagree with the conclusion that the record supports a finding of a violation of Jud.Cond.R. 4.3(A). I agree with the rest of the conclusions reached and the sanctions issued against the respondent.

/s/ **Joseph M. Houser**  
Judge Joseph M. Houser