

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 30, 2012

[Cite as *08/30/2012 Case Announcements #2, 2012-Ohio-3952.*]

MISCELLANEOUS ORDERS

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

In re Judicial Campaign Complaint
Against Jeanette Moll



Case No. 2012-1186

ORDER

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) and R.C. 2701.11. The commission members are Judge Lisa L. Sadler, chair, Judge Barbara P. Gorman, Judge Thomas A. Swift, Judge Mark K. Wiest, and Judge Peter M. Handwork.

The complainant, Lynne Rife, filed a complaint with the Board of Commissioners on Grievances and Discipline of the Supreme Court alleging that the respondent, Jeanette Moll, had violated various provisions of Canon 4 of the Code of Judicial Conduct. The respondent is a former magistrate who has never held judicial office. Following a review by a probable-cause panel of the board pursuant to Gov.Jud.R. II(5)(B), the secretary of the board filed a formal complaint alleging that the respondent, during the course of a judicial campaign, committed violations of Jud.Cond.R. 4.3(A) (a judicial candidate shall not knowingly or with reckless disregard distribute information concerning the judicial candidate that would be deceiving or misleading to a reasonable person), 4.3(C) (a judicial

candidate shall not knowingly or with reckless disregard use the title of an office not currently held), and 4.3(F) (a judicial candidate shall not knowingly or with reckless disregard misrepresent their present position).

On July 6, 2012, a hearing panel appointed by the board conducted a hearing on the allegations contained in the formal complaint. On July 16, 2012, the hearing panel issued its findings of fact, conclusions of law, and recommendations in this matter. The hearing panel dismissed Counts II and III of the complaint, but found by clear and convincing evidence that the respondent violated Count I of the complaint by using campaign materials (a flyer, submitted to the panel as complainant's Exhibit 1) displaying a photograph of the respondent in a judicial robe that inaccurately gives the impression that she is a current judge or magistrate, in violation of Jud.Cond.R. 4.3(A), (C), and (F).

The hearing panel recommended that the respondent be ordered to immediately and permanently cease from using complainant's Exhibit 1 and to file an affidavit indicating the steps taken to remove the exhibit from circulation. The hearing panel also recommended the respondent be fined \$1,000, stayed on condition there were no further violations of the Code of Judicial Conduct related to campaign conduct, and that respondent be ordered to pay the costs of the proceedings.

On July 19, 2012, the Supreme Court of Ohio appointed this five-judge commission to review the hearing panel's report pursuant to Gov.Jud.R.II (5)(D). We were provided with the record certified by the board and a transcript of the July 6, 2012 proceedings before the hearing panel.

We issued a cease-and-desist order on July 31, 2012, ordering the respondent to immediately and permanently cease and desist from using complainant's Exhibit 1. In addition, we ordered the respondent to file an affidavit detailing her attempts to ensure that all undistributed copies of the exhibit were destroyed or returned to her. The respondent filed an affidavit on August 3, 2012, and a supplemental affidavit on August 6, 2012. The full commission met by telephone conference on August 15 and August, 23, 2012. The respondent and the complainant each filed objections to the hearing panel's recommendation and answer briefs in response. A motion filed by the respondent on August 8, 2012, for sanctions and a motion filed by the complainant on August 10, 2012, to supplement the record were both denied on August 16, 2012.

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 hearing panel and that there has been no abuse of discretion. We unanimously hold that the record supports the findings of the hearing panel that the respondent violated Jud.Cond.R. 4.3 (A), (C), and (F) as alleged in Count I of the complaint.

Complainant's Exhibit 1, the flyer, creates an impression the respondent is currently serving in an elected or appointed judicial office. The front of the flyer depicts the respondent in a traditional judicial robe under the heading "Jeanette Moll For Judge." However, no text on the same side of the flyer indicates whether the respondent is a current or former magistrate or judge. Only the back of the flyer provides some indication as to the office the respondent may hold as one bullet point simply states "Magistrate, Guernsey County". There is no indication whether the office is currently or formerly held by the respondent, as no dates are provided as to the length of time she held the position. In addition, and contrary to the argument made by the respondent, the phrase "for judge" on the front of the flyer does not adequately clarify whether the respondent is a current or former magistrate.

In *In re Judicial Campaign Complaint Against Lilly*, we noted that the use of a photograph by a judicial candidate in a robe is not per se misleading, but held that the photograph must be accompanied by a prominent statement that the candidate is a former judge. 131 Ohio St.3d 1515, 2012-Ohio-1720, 965 N.E.2d 315. Our decision in *Lilly* persuades us to adopt a similar holding in this case. Here, the flyer did not contain an indication of the status of the respondent as a former magistrate. However, in comparison, the campaign materials submitted as complainant's Exhibits 5 and 6 also display the respondent in a robe, but the dates of the respondent's service as a magistrate are in close proximity to the photograph. Had the respondent placed the same text in close proximity to the photograph in complainant's Exhibit 1, there would be no violation of Canon 4.

We agree with the hearing panel that the respondent's use of Exhibit 1 was either knowingly false, or with reckless disregard for whether or not it was false, or if true, would be deceiving or misleading to a reasonable person. Jud.Cond.R. 4.3(A). We also agree that the campaign flyer brochure implies that the respondent is currently in an office that she does not hold, in violation of Jud.Cond.R. 4.3(C), and misrepresents the respondent's present position, in violation of Jud.Cond.R. 4.3(F).

In her objections, the respondent cites *In re Judicial Campaign Grievance Against O'Neill* for the proposition that Jud.Cond.R. 4.3 is vague and overbroad both on its face and as applied to the facts of this case. 132 Ohio St.3d 1472, 2012-Ohio-3223, 970 N.E.2d 973. The respondent's objections are not well taken. *O'Neill* held only that Jud.Cond.R. 4.3(C) was unconstitutional as applied to the facts in that particular case, and therefore it has limited precedential value to the case at hand.

We believe that a judicial candidate who violates Canon 4 should receive a sanction that is commensurate to the seriousness of the violations. Sanctions are imposed in order to punish the violator and deter similar violations by candidates in the future. *In re Judicial Campaign Complaint Against Morris*, 81 Ohio Misc.2d 64, 65, 675 N.E.2d 580 (Five-Judge Commission, 1997). The respondent violated three separate provisions of Canon 4 through her use of the flyer. She was also ordered by this commission to cease and desist from using the flyer. Affidavits filed by the respondent provide ample evidence that she has and will continue to abide by the order. However, we believe that the respondent's use of the flyer warrants the imposition of a sanction, despite the hearing panel's recommendation that a \$1,000 sanction should be imposed, but stayed. Consequently, we order the respondent to pay a \$1,000 fine. No non-monetary sanctions are imposed.

In addition, we order the respondent to pay the complainant \$2,500 in attorney fees and to pay the costs of all proceedings before the hearing panel and this commission. Payment of the fine and costs shall be made within 30 days of the date of this order. Payment of the attorney fees to the complainant's counsel shall be made within 45 days of the date of this order.

The secretary shall issue a statement of costs before this commission and instructions regarding the payment of the fine, costs, and attorney fees. It is further ordered that this opinion shall be published by the Supreme Court Reporter in the manner prescribed by Gov.Bar R. V(8)(D)(2) and that respondent bear the costs of publication.

SO ORDERED.

/s/ Lisa L. Sadler
Judge Lisa L. Sadler, Chair

/s/ Barbara P. Gorman
Judge Barbara P. Gorman

/s/ Thomas A. Swift
Judge Thomas A. Swift

/s/ Mark K. Wiest
Judge Mark K. Wiest

/s/ Peter M. Handwork
Judge Peter M. Handwork