

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

January 10, 2013

[Cite as *01/10/2013 Case Announcements #2, 2013-Ohio-34.*]

MISCELLANEOUS ORDERS

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

In re Judicial Campaign Complaint

Case No. 2012-1874

Against Elinore Marsh Stormer

O R D E R

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 William G. Lauber, Judge R. Scott Krichbaum, and Judge Nancy R. McDonnell.

The complainant, Judge Alison McCarty, filed a complaint with the Board of Commissioners on Grievances and Discipline of the Supreme Court alleging that the respondent, Judge Elinore Stormer, a judicial candidate, had violated the version of Jud.Cond.R. 4.4(E) that was in effect in 2012. 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 a violation of Jud.Cond.R. 4.4(E) (a judicial candidate shall not participate in or receive campaign contributions from a judicial-campaign-fundraising event that categorizes or identifies participants by the amount of the contribution made to the event).

On October 29, 2012, a hearing panel appointed by the board conducted a hearing on the allegations contained in the formal complaint. The hearing panel reviewed two separate judicial-campaign-fundraising events. The first event

occurred on July 31, 2012, and the second event occurred on September 25, 2012. Both fundraising events were managed by the Summit County Democratic Party and advertised three or more levels of sponsorship for the events. The respondent participated in each event and received campaign funds from the events. The evidence at the hearing revealed that public recognition of donors and amounts occurred only during the September 25, 2012 event.

On November 5, 2012, the hearing panel issued its findings of fact, conclusions of law, and recommendations in this matter. The hearing panel found by clear and convincing evidence that the respondent violated Jud.Cond.R. 4.4(E) by attending, participating, and receiving money from the September 25, 2012 fundraising event. The hearing panel also made the specific finding that the respondent had not previously violated Canon 4 of the Code of Judicial Conduct.

The hearing panel recommended that no disciplinary sanction or fine be imposed against the respondent. However, the hearing panel ordered the respondent to pay the cost of the proceedings and reimburse the complainant's attorney fees in the amount of \$2,000.

On November 9, 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 October 29, 2012 proceedings before the hearing panel.

The full commission met by telephone conference on December 19, 2012. The respondent and the complainant each filed objections to the hearing panel's recommendation and answer briefs in response. On December 10, 2012, the respondent filed a motion to strike the complainant's notice of appearance and objections, and on December 17, 2012, the respondent filed a motion to strike the complainant's response to respondent's objections. We deny both of the respondent's motions.

Pursuant to Gov.Jud.R. II(5)(D)(1), we are required to review the record to determine whether it supports the findings of the hearing panel and to verify that there has been no abuse of discretion by the hearing panel. We unanimously hold that the record supports the findings of the hearing panel that the respondent violated Jud.Cond.R. 4.4(E). We also find that the hearing panel did not abuse its discretion in reaching its recommendation.

A violation of Jud.Cond.R. 4.4(E) or its predecessor, Canon 7(C)(3), is a case of first impression for this commission. Consequently, we are guided by the clear and unambiguous language of the rule. In 2012, Jud.Cond.R. 4.4(E) provided:

A judicial candidate shall not participate in or receive campaign contributions from a judicial fundraising event that categorizes or

identifies participants by the amount of the contribution made to the event.

We agree with the hearing panel that our analysis of both fundraising events begins with whether the events identified participants “by the amount of the contribution made to the event.” The hearing panel found that the July 31, 2012 event, while providing different levels of sponsorship, did not announce or publicize the donors during the event. On the other hand, the September 25, 2012 event clearly identified donors and their corresponding sponsorship levels. The public recognition of the donors on September 25, 2012, was an expression of gratitude, which Jud.Cond.R. 4.4(E) seeks to avoid in order to preserve the independence, integrity, and impartiality of the judiciary.

We also agree with the hearing panel that the respondent’s testimony that she had no knowledge of the public recognition of the donors at the September 25, 2012 fundraiser is immaterial to the determination whether she violated the rule. The rule carries no scienter requirement and consequently serves to prohibit the activity regardless of the knowledge or even the level of involvement by the candidate or her campaign committee.

We believe that a judicial candidate who violates Canon 4 of the Code of Judicial Conduct should receive a sanction that is appropriate to the seriousness of the violation. The purpose of a sanction is to inform other judicial candidates of the seriousness of such violations and to deter future similar misconduct. A sanction that is viewed as an effective deterrent best serves the public interest and the profession. *In re Judicial Campaign Complaint Against Per Due*, 98 Ohio St. 3d 1548, 2003-Ohio-2032, 787 N.E.2d 10 (Five-Judge Commission, 2003). Accordingly, we order the respondent to pay a \$1,000 fine.

Although the Supreme Court amended Jud.Cond.R. 4.4(E) on January 1, 2013, effectively eliminating the rule violated herein, our finding of a violation is nevertheless warranted, since the misconduct occurred during a period of time when the rule applied to all judicial candidates.

In addition, we order the respondent to pay the complainant \$6,000 in attorney fees and to pay the costs of the proceedings before the hearing panel. The complainant’s legal fees exceeded \$12,000 to pursue a finding of a violation of Jud.Cond.R. 4.4(E) premised on two separate fundraising events. Since a violation was found by the hearing panel based on only one of the events, we have calculated a commensurate award of legal fees. In addition, the commission believes that the hourly rate for the complainant’s attorney fees is reasonable and comparable to fees charged for similar work performed before this commission. Payment of the fine and costs shall be made within 45 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. 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/ Lisa L. Sadler
Judge Lisa L. Sadler, Chair

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

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

/s/ William G. Lauber
Judge William G. Lauber

/s/ Nancy R. McDonnell
Judge Nancy R. McDonnell