ORIGINAL

BEFORE THE COMMISSION OF FIVE JUDGES
APPOINTED BY
THE CHIEF JUSTICE OF THE COURT OF APPEALS ASSOCIATION

12-0418

In Re:

Judicial Campaign Grievance against

William M. O'Neill (0024031)

Respondent

Carlos M. Crawford

Complainant

Case No. SCC12-001

DETERMINATION AND FINAL ORDER ON REVIEW OF HEARING PANEL REPORT AND RECOMMENDATION

FILED
MAR 5 2012
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

FILED
MAR 12 2012
CLERK OF COURT
SUPREME COURT OF OHIO

INTRODUCTION

Under Rule II Section 6(C)(1) of the Ohio Rules for Government of the Judiciary, the Chief Justice of the Courts of Appeals appointed this Commission to review and consider a Report of Findings and Recommendations of a Hearing Panel issued in regard to a grievance filed against William M. O'Neill, a candidate for Associate Justice of the Ohio Supreme Court in the Democratic Primary to be held on March 6, 2012. The Hearing Panel determined that Mr. O'Neill violated Canon 4, Rule 4.3(C), of the Ohio Code of Judicial Conduct by using the title "judge" on a piece of campaign literature in a manner that implies that he is currently a judge when, in fact, he is a retired judge. The Hearing Panel recommended issuance of a cease and desist order prohibiting Mr. O'Neill

from further distributing campaign material on which he is referred to as judge. It further recommended that Mr. O'Neill not be further disciplined.

This Commission previously issued an Interim Order directing Mr. O'Neill to cease and desist from further distribution of any campaign material that refers to him as judge until such time as it had considered the merits of the grievance against him. We have now considered those merits and determined that Hearing Panel's Report of Findings and Recommendations is supported by the record and that the Hearing Panel did not abuse its discretion. Accordingly, this Commission directs Mr. O'Neill to permanently cease and desist from distributing campaign material that refers to him as judge.

BACKGROUND

Carlos M. Crawford of Delaware, Ohio, commenced this matter by filing a grievance with Disciplinary Counsel of the Ohio Supreme Court. In his grievance, Mr. Crawford asserted that Mr. O'Neill had handed him a campaign brochure that referred to Mr. O'Neill as "'Judge O'Neill' on seven different occasions." Mr. Crawford wrote that he was concerned that "this will mislead potential voters as it did [him], in believing that Mr. O'Neill is a sitting judge" and expressed a belief that using the term "judge" in such a manner was a violation of the Ohio Code of Judicial Conduct. He further wrote that he was not asking that Mr. O'Neill be disciplined, but "would just like to make him aware of this and ask that he cease the use of the term judge in violation of the Code." He attached a copy of the brochure at issue to his grievance.

Under Rule II Section 6(A)(2) of the Ohio Rules for Government of the Judiciary, The Chief Justice of the Courts of Appeals appointed a three-member review panel to determine whether there was probable cause to believe Mr. O'Neill had violated Canon 4 of the Ohio Code of Judicial Conduct. After considering Mr. Crawford's grievance and a response filed by Mr. O'Neill, the three-member review panel determined that there was probable cause to believe that Mr. O'Neill had violated Canon 4, Rule 4.3(C).

The Chief Justice of the Courts of Appeals next, under Rule II Section 6(B) of the Ohio Rules for Government of the Judiciary, appointed a hearing panel of three fulltime trial judges to conduct a hearing on Mr. Crawford's grievance. Mr. Crawford did not appear at that hearing. Mr. O'Neill, however, appeared and testified. He acknowledged that he was the author of the brochure about which Mr. Crawford complained and that he retired from the Eleventh District Court of Appeals in 2007. He pointed out that, on one side of the brochure, was printed, among other things, "[a] former Court of Appeals judge who decided over 2,000 appellate cases," and, on the other side, was printed, among other things, that "[h]e served on the Court of Appeals where he decided over 2,000 cases from shoplifting to murder." In addition, the brochure included the sentence "A REGISTERED NURSE who currently works in a Pediatric Emergency Department." The text of the brochure refers to Mr. O'Neill twice as "Judge William M. O'Neill and six times as "Judge O'Neill." The disclaimer also refers to him as "Judge William M. O'Neill." The word retired does not appear anywhere on the brochure.

Mr. O'Neill submitted as exhibits a Certificate of Assignment by which former Chief Justice Thomas J. Moyer appointed him to preside in the Cuyahoga County Court of Common Pleas, Probate Division, to perform a marriage ceremony on May 23, 2009, and an attendee list from a 2011 Retired Judge Seminar. The Certificate of Assignment referred to him as "The Honorable William Michael O'Neill, a retired judge of the Eleventh District Court of Appeals" and the attendee list referred to him as "Hon. William M. O'Neill, Retired From: Eleventh District Court of Appeals." Mr. O'Neill testified that, other than the assignment in 2009 to perform a wedding, he has not sat as a judge since he retired. He also testified that he had no intention or desire to mislead voters, that he is a retired judge, and that he refers to himself on the campaign trail as "a retired old guy."

In its Report of Findings and Recommendations, the Hearing Panel wrote that it agreed with Mr. O'Neill that he is a judge within the meaning of the Ohio Code of Judicial Conduct. It also wrote that the question of whether he violated Canon 4, Rule 4.3(D), which prohibits use of the term "judge" by a judicial candidate who is not a judge unless the word "elect" or "vote" appears before the candidate's name or the word "for" appears between the name of the candidate and the term "judge," is not disputed or at issue in this proceeding. It concluded, however, that "he did, by means of campaign materials knowingly use the title of an office not currently held by him, namely the office of judge, in a manner that implies that he does currently hold that office." According to the Hearing Panel, "[t]he fact that he is known as judge because of his tenure on the

Eleventh District Court of Appeals and that as a retired judge he is known as a judge, he nevertheless as a judicial candidate is prohibited from using the term 'judge' before his name in campaign materials since he does not currently hold that office but is instead retired from that office." The Hearing Panel recommended that this Commission issue a cease and desist order prohibiting Mr. O'Neill from distributing campaign material on which he is referred to as judge. It further determined that he had not previously violated Canon 4 and recommended that he not be further disciplined.

DISCUSSION

Under Rule II Section 6(C)(2) of the Ohio Rules for Government of the Judiciary, this Commission "may make its determination from the report of the hearing panel, permit or require the filing of briefs, conduct oral argument, or order the hearing panel to take additional evidence." There are no factual disputes in this matter, and the Commission, in its discretion, has determined that it will make its decision from the report of the Hearing Panel and the record of the hearing that took place before that panel.

Rule II Section 6(C)(2) provides for this Commission to apply a two-part standard of review to the determination and recommendation of the Hearing Panel. First, it is to determine whether the Hearing Panel's finding of a violation is supported by the record, and, second, it is to determine whether the Hearing Panel abused its discretion.

The Hearing Panel's finding that Mr. O'Neill violated Canon 4, Rule 4.3(C), of the Ohio Code of Judicial Conduct is supported by the record.

Although the brochure at issue did include that Mr. O'Neill is a "former Court of Appeals judge, that he "served" on the Court of Appeals, and that he currently works in a Pediatric Emergency Department, the repeated use of "Judge O'Neill" and "Judge William M. O'Neill" on the brochure supports the Hearing Panel's finding that he used the title "judge" in a manner that implies that he is currently serving as a judge on some court rather than that he is a retired judge. Further, the Hearing Panel did not abuse its discretion in any way, including by recommending that this Commission enter a cease and desist order prohibiting Mr. O'Neill from further distributing campaign material on which he is referred to as judge.

CONCLUSION

The Hearing Panel's finding is supported by the record, and it did not abuse its discretion. William M. O'Neill is hereby ordered to immediately and permanently cease and desist from distributing campaign material that refers to him as judge.

IT IS SO ORDERED.

Clair E. Dickinson
Judge Clair E. Dickinson, Chair

Robert A. Henderson by CED
Judge Robert A. Hendrickson

Penelope R. Cunningham by CED
Judge Penelope R. Cunningham

William B. Hoffman by CED
Judge William B. Hoffman

Judith L. French by CED
Judge Judith L. French