

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

November 4, 2003

MISCELLANEOUS ORDERS

2003-1871. In re Judicial Campaign Complaint Against Grunda.

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

OPINION

This matter came to be reviewed by a commission of five judges appointed by the Supreme Court of Ohio pursuant to Rule II, Section 5(E)(1) of the Rules for the Government of the Judiciary of Ohio and R.C. 2701.11. The commission members are: Judges David A. Ellwood, chairman; Denise Ann Dartt; Elizabeth Kobly; Jerry Hayes; and Michael J. Voris.

The complainant in this matter is Roger McFrederick. The respondent, Jay Grunda, is a judicial candidate seeking election to the Elyria Municipal Court in the November 2003.

The complainant filed a judicial campaign grievance with Secretary of the Board of Commissioners on Grievances and Discipline on September 25, 2003. The complainant alleged that respondent violated Canon 7(B)(3)(b) and (c) of the Code of Judicial Conduct by posting campaign advertisements after the primary that identified respondent as an “Endorsed Democrat.” Attached to the grievance were photographs of three billboards that identified respondent and included the phrase “Endorsed Democrat.” The grievance further alleged that the photographs were taken at three specific locations on September 20, 2003.

A probable cause panel of the Board was appointed to review the grievance, and, upon finding probable cause, the panel ordered the Secretary of the Board to prepare and file a formal complaint based on the complainant's grievance. On October 7, 2003, the Secretary filed a formal complaint alleging that respondent, in posting the billboards containing the phrase "Endorsed Democrat," violated Canon 7(B)(3)(c) of the Code of Judicial Conduct by identifying himself in advertising after the date of the primary as a member of a political party.

The Board convened a three-member hearing panel, which conducted a hearing on the formal complaint on October 20, 2003. The parties stipulated to the relevant facts, and the panel heard statements from complainant and counsel for the respondent. On October 24, 2003, the hearing panel issued its findings of fact, conclusions of law, and recommendations, which are appended to this opinion. The hearing panel found, by clear and convincing evidence, that respondent sponsored advertisements after the date of the primary election that identified respondent as a member of the Democratic party and that the advertisements violated Canon 7(B)(3)(c) of the Code of Judicial Conduct. The hearing panel recommended that respondent cease and desist from using the term "Democrat" in the billboards in question or in any other written materials used by respondent prior to the general election. The hearing panel did not recommend any additional sanction against respondent because the complained of conduct was not done in bad faith. The hearing panel further recommended that costs of the proceeding be taxed to respondent.

On October 31, 2003, the Supreme Court of Ohio appointed this five-judge commission to review the report of the hearing panel pursuant to Gov. Jud. R. II, Section 5(E)(1). The commission was provided with the record certified by the Board, including the transcript of the October 20, 2003 proceeding before the hearing panel and exhibits consisting of photographs of the billboards in question. On November 3, 2003, the commission conducted a telephone conference during which it deliberated on this matter.

Pursuant to Gov. Jud. R. II, Section 5(E)(1), the commission is required to independently determine whether clear and convincing evidence exists to support a finding that respondent violated Canon 7 of the Code of Judicial Conduct. Having reviewed the record made before the Board hearing panel and the report of the hearing panel, the commission affirms and adopts the findings of fact and conclusions of law made by the hearing panel with regard to the violation of Canon 7(B)(3)(c). This provision allows a judicial candidate, after the date of a primary election, to identify himself or herself as a member of a political party only in person. The uncontroverted evidence in the record demonstrates that respondent used the phrase "Endorsed Democrat" in a judicial campaign advertisement that appeared after the date of the primary election. This establishes, by clear and convincing evidence, a violation of Canon 7(B)(3)(c). As noted in the report of the hearing panel, there would have been no violation of this provision had respondent used the phrase "endorsed by the Democratic party."

Sanctions

The commission concurs with the finding of the hearing panel that respondent did not commit the violation of Canon 7(B)(3)(c) in bad faith. Moreover, we find a cease and desist order would have no meaningful impact since the election is today. Although we find a violation, we recommend no sanction be imposed other than ordering respondent to pay costs of proceedings before the Board and this commission.

We further concur in the belief of the hearing panel that the Supreme Court should clarify the portions of the Code of Judicial Conduct at issue in this matter. Canon 7(B)(3) recognizes the nonpartisan nature of judicial elections in Ohio, and we believe the provisions could be rewritten to provide judicial candidates with more guidance regarding the manner in which political party affiliations and endorsements may and may not be used in judicial campaign advertisements.

The Secretary shall issue a statement of costs before this commission and instructions regarding the payment of those costs and the costs certified by the Board. Payment of these costs shall be made by December 1, 2003. This opinion shall be published by the Supreme Court Reporter in the manner prescribed by Rule V, Section 8(D)(2) of the Rules for the Government of the Bar of Ohio.

So Ordered.

Judge David A. Ellwood, Chair

Judge Denise Ann Dartt

Judge Elizabeth Kobly

Judge Jerry Hayes

Judge Michael J. Voris

Dated: November 4, 2003