

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 4, 2017

[Cite as *12/04/2017 Case Announcements*, 2017-Ohio-8776.]

SLIP OPINIONS REPLACED BY OHIO OFFICIAL REPORTS VERSIONS AS OF DECEMBER 4, 2017

The official versions of the opinions listed below, which were previously released as slip opinions, have been published in the December 4, 2017 Ohio Official Reports advance sheet. These opinions should now be cited using the Ohio Official Reports citation format.

2014-0807. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 151 Ohio St.3d 12, 2017-Ohio-2734.

2016-0215. State v. Grimes, 151 Ohio St.3d 19, 2017-Ohio-2927.

2016-1257. State ex rel. Cowell v. Croce, 151 Ohio St.3d 57, 2017-Ohio-8132.

2016-1502. State ex rel. Mancino v. Tuscarawas Cty. Court of Common Pleas, 151 Ohio St.3d 35, 2017-Ohio-7528.

2016-1514. State ex rel. Hughes v. Cuyahoga Cty., 151 Ohio St.3d 45, 2017-Ohio-7780.

2016-1569. Disciplinary Counsel v. Garber, 151 Ohio St.3d 1201, 2016-Ohio-7956.

2016-1730. State ex rel. Ramirez-Ortiz v. Twelfth Dist. Court of Appeals, 151 Ohio St.3d 46, 2017-Ohio-7816.

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 on November 7, 2017, in accordance with Gov.Jud.R. II(5)(D)(1) and R.C. 2701.11. The commission members are Judge David Gormley, chair; Judge Kathleen Giesler; Judge Cynthia Rice; Judge Mark Wiest; and Judge Timothy Williams.

Procedural History

On October 9, 2017, complainant Melynda Cook Howard filed a judicial-campaign grievance against respondent, James Emmett Sherron, a candidate for the Middletown Municipal Court, with the Board of Professional Conduct. On October 16, 2017, complainant Marilyn Hatfield also filed a judicial-campaign grievance with the board. After a review by a probable-cause panel of the board under Gov.Jud.R. II(5)(B), the director of the board filed a formal complaint containing the following two counts against respondent:

- Count I:** Respondent violated Jud.Cond.R. 4.3(I) when he knowingly or with reckless disregard posted material that stated he is licensed to practice in all federal courts, when he is not, in fact, so licensed.
- Count II:** Respondent violated Jud.Cond.R. 4.3(C) when his campaign committee knowingly or with reckless disregard distributed materials for a fundraiser to support “Middletown Municipal Court Judge James Sherron” when, in fact, Respondent was not the current municipal court judge.

The formal complaint was heard by a hearing panel of the board on November 1, 2017, and the panel issued a report of its findings, conclusions, and recommendations on November 6, 2017. In the report, the hearing panel recommended that respondent be required to pay a fine of \$200 for his violation of Jud.Cond.R. 4.3(I), a fine of \$600 for his violation of Jud.Cond.R. 4.3(C), and the costs of the proceedings.

The commission was provided with the record certified by the board and a transcript of the November 1, 2017, proceedings before the hearing panel. Additionally, counsel for both respondent and complainants informed the commission that the parties had waived any objections to the hearing panel’s

finding and recommendations. On November 17, 2017, the commission conducted a telephone conference during which it deliberated on this matter.

Commission Opinion

As Gov.Jud.R. II(5)(D)(1) directs, the commission is charged with reviewing the record to determine whether that record supports the findings of the hearing panel and whether there has been an abuse of discretion by the panel. As discussed in this opinion, having reviewed the record made before the board hearing panel and the report of the hearing panel, the commission unanimously holds that there was no abuse of discretion by the hearing panel and that the record supports the panel's findings that respondent violated Jud.Cond.R. 4.3(C) and (I) as alleged in Counts I and II of the complaint.

Definitions

Both counts against respondent require a finding that respondent acted "knowingly" or "with reckless disregard." The meanings of these terms are established by the Code of Judicial Conduct and case law. Specifically, Jud.Cond.R. 4.6(G) defines "knowingly" as meaning "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." Additionally, a judicial candidate "acts 'recklessly' if the result is possible and the candidate chooses to ignore the risk." *In re Judicial Campaign Complaint Against Moll*, 135 Ohio St.3d 156, 2012-Ohio-5674, 985 N.E.2d 436, ¶ 11.

Count I

Jud.Cond.R. 4.3(I) prohibits a judicial candidate from knowingly or with reckless disregard making "a false statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or concerning any position a judicial candidate held for which he or she received a salary or wages."

The commission agrees with the hearing panel that a violation of Jud.Cond.R. 4.3(I) has been established by clear and convincing evidence. The record indicates that during the course of the judicial campaign and as a candidate for judicial office, respondent knowingly disseminated campaign material that included a false statement of fact concerning the professional licenses he holds, namely, his admission to "all Federal Courts." Additionally, respondent included the false statement in the campaign materials with reckless disregard as to its truth or falsity.

Count II

Jud.Cond.R. 4.3(C) prohibits a judicial candidate from knowingly or with reckless disregard using “the title of a public office or position immediately preceding or following the name of the judicial candidate, when the judicial candidate does not hold that office or position.” The commission agrees with the hearing panel that a violation of Jud.Cond.R. 4.3(C) has been established by clear and convincing evidence. During the course of a judicial campaign and as a candidate for judicial office, respondent knowingly disseminated campaign material (i.e., a paper invitation) in which he knowingly used the title of a public office (i.e., “Middletown Municipal Court Judge”) immediately preceding his name, when in fact respondent did not hold that office at the time and has never held it.

Sanction

The commission concurs with the recommendation of the hearing panel that respondent be required to pay a fine of \$200 for his violation of Jud.Cond.R. 4.3(I) (Count I), a fine of \$600 for his violation of Jud.Cond.R. 4.3(C) (Count II), and the costs of the proceedings. As noted by prior commissions, the processes that exist for adjudicating judicial-campaign complaints serve multiple purposes: to punish behavior that is contrary to the Code of Judicial Conduct, to inform the legal and judicial communities of the appropriate standards governing judicial-campaign conduct, and to deter similar violations by judicial candidates in future elections. *See In re Judicial Campaign Complaint Against Morris*, 81 Ohio Misc.2d 64, 675 N.E.2d 580 (1997); *In re Judicial Campaign Complaint Against Burick*, 95 Ohio Misc.2d 1, 705 N.E.2d 422 (1999); *In re Judicial Campaign Complaint Against Brigner*, 89 Ohio St.3d 1460, 732 N.E.2d 994 (2000). These processes serve the additional purposes of informing the public of the self-regulating nature of the legal profession and enhancing public confidence in the integrity of the proceedings. The sanctions recommended in this instance serve these purposes and again underscore the responsibility of all judicial candidates to conduct their campaigns with the same degree of honesty, dignity, and respect that, if elected, they would expect to receive from lawyers, litigants, and other members of the public.

The secretary is directed to issue a statement of costs before the commission as well as instructions regarding the payment of the fines and costs. Payment of all monetary sanctions must be made by respondent on or before January 30, 2018.

This opinion is to be published by the Supreme Court reporter of decisions in the manner prescribed by Gov.Bar.R. V(8)(D)(2).

So Ordered.

/s/ David Gormley
Judge David Gormley, Chair

/s/ Kathleen Giesler
Judge Kathleen Giesler

/s/ Cynthia Rice
Judge Cynthia Rice

/s/ Mark Wiest
Judge Mark Wiest

/s/ Timothy Williams
Judge Timothy Williams

MEDIATION MATTERS

2016-1649. State ex rel. Kindred Healthcare Operating, Inc. v. Indus. Comm.

Franklin App. No. 15AP-1106, 2016-Ohio-7128. Case returned to the regular docket under S.Ct.Prac.R. 19.01. Appellant shall file a brief within 40 days, and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. 16.02 through 16.07. As provided in S.Ct.Prac.R. 16.07, the court may dismiss this case or take other action if the parties fail to timely file merit briefs.

2016-1845. State ex rel. Roberts v. Indus. Comm.

Franklin App. No. 15AP-892, 2016-Ohio-7570. Pursuant to R.C. 2710.06(B)(1), the court has been notified that the parties have reached a settlement. This case is returned to the regular docket under S.Ct.Prac.R. 19.01. Within 60 days, the filing party shall file either an application for dismissal or a notice of failure of settlement. The case will be dismissed for want of prosecution if an application for dismissal or a notice of failure of settlement is not filed within 60 days.

2017-1255. State ex rel. Mathews v. Montgomery.

In Mandamus. The court hereby returns this case to the regular docket under S.Ct.Prac.R. 19.01. Respondents shall file a response to the complaint within 21 days of the date of this entry.

The court refers the following cases to mediation under S.Ct.Prac.R. 19.01 and stays all filing deadlines for the cases until further order of this court. The court will not issue any decision on the merits of the cases until mediation has concluded.

2017-1589. State ex rel. Sales v. Pub. Emps. Retirement Bd.

Franklin App. No. 16AP-582, 2017-Ohio-7835.

2017-1593. State ex rel. Jenkins v. Indus. Comm.

Franklin App. No. 16AP-534, 2017-Ohio-7896.

2017-1618. State ex rel. Cincinnati Enquirer v. Cincinnati Police Dept.

In Mandamus.

2017-1666. State ex rel. Dunn v. Court of Common Pleas.

Franklin App. No. 14AP-819, 2017-Ohio-7679.