

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

November 26, 2024

[Cite as *11/26/2024 Case Announcements #5, 2024-Ohio-5585.*]

MISCELLANEOUS ORDERS

In re Judicial Campaign Complaint
Against Daniel Francis Petticord

Case No. 2024-1560

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 18, 2024, in accordance with Gov.Jud.R. II(5)(D)(1). The commission members are Judge Howard Harcha III, Chair, and Judges James Fredericka, Terri Jamison, Brendan Sheehan, and Richard Wetzl, Jr.

Procedural History

Complainant, Giovanna Victoria Bremke, filed a judicial-campaign grievance with the Board of Professional Conduct against respondent, Daniel Francis Petticord. After review by a probable-cause panel of the board under to Gov.Jud.R. II(5)(B), the panel found probable cause to believe that respondent had committed a violation of the Code of Judicial Conduct. The director of the Board of Professional Conduct, acting in accordance with instructions from that panel, prepared and certified a one-count formal complaint on October 24, 2024, alleging that respondent, a judicial candidate as defined in Jud.Cond.R. 4.6(F) during the course of a judicial campaign, violated Jud.Cond.R. 4.3(A).

The formal complaint was heard by a hearing panel of the board. That hearing panel issued a report of its findings, conclusions, and recommendations. In the report, the hearing panel recommended that respondent receive a public reprimand, pay the costs of these proceedings, and pay attorney fees in an amount to be determined by this commission for respondent's violation of Jud.Cond.R. 4.3(A).

The commission received and reviewed the copy of the record certified by the board, including the joint stipulations, joint exhibits, and the transcript of the proceedings before the hearing panel. The commission also reviewed the panel's findings of fact and conclusions of

law, and Recommendation of the Hearing Panel along with the Second Set of Stipulations of Complainant and Respondent. On November 18, 2024, the commission conducted a video conference during which it deliberated on this matter. Upon review of the entire record, including the second set of stipulations, the commission unanimously agreed with the panel's conclusion.

Commission Opinion

Under Gov.Jud.R. II(5)(D)(1), the commission is charged with reviewing the record to determine whether it supports the hearing panel's findings of fact and determine whether the hearing panel abused its discretion. The commission unanimously holds that the hearing panel did not abuse its discretion and that the record supports the panel's findings that respondent violated Jud.Cond.R. 4.3(A) as alleged in the single count of the formal complaint.

The complaint alleged a violation of Canon 4 [a judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary]—specifically, Jud.Cond.R. 4.3(A) which provides:

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements on radio or television or in a newspaper or periodicals, electronic communications, a public speech, press release, or otherwise, shall not knowingly or with reckless disregard do any of the following:

(A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent either knowing the information to be false or with a reckless disregard of whether or not it was false[.]

To establish a violation of Jud.Cond.R. 4.3(A) by respondent requires 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.” 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*, 2012-Ohio-5674, ¶ 11.

Based on the joint stipulations, the joint exhibits, and the hearing transcript, the hearing panel did not abuse its discretion in finding that respondent knowingly and recklessly violated Jud.Cond.R. 4.3(A). Judicial candidates are responsible for reviewing and approving the contents of all campaign materials before they or their campaigns disseminate those materials. Jud.Cond.R. 4.2(A)(2). The hearing panel found that respondent simply read the decisions at issue, which were provided to him by the complainant's legal opponents, who are respondent's coworkers, and concluded that the appellate court deemed the complainant to be misleading. The panel found that respondent had little to no criminal or appellate work and therefore was not familiar with direct appeals of criminal defendants, especially indigent defendants. The panel found that respondent's lack of inquiry into this area of practice demonstrates the reckless nature

of his conduct. The commission agrees that respondent's behavior was done knowingly and with reckless disregard.

The panel recommended that respondent receive a public reprimand, pay the costs of these proceedings, and pay attorney fees in an amount determined by the commission. The panel determined that there was no need to expedite the matter or to issue a cease-and-desist order because the November 5, 2024 judicial election had already taken place by the time the panel's findings of fact and conclusions of law and recommendations had been issued.

Upon request of respondent and the complainant, the commission accepted and considered the parties' second set of stipulations as part of its review of the case documents. The parties stipulated to the following:

1. Ms. Bremke and Mr. Petticord received and reviewed the Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Panel.
2. Neither Ms. Bremke nor Mr. Petticord request permission to file briefs, submit additional evidence, or participate in oral argument.
3. Respondent seeks a sanction for his conduct as follows:
 - a. Payment of the costs of the proceedings;
 - b. Payment of Ms. Bremke's attorney's fees of \$3,040; and
 - c. A \$1,000 fine in lieu of a public reprimand.
4. Ms. Bremke does not oppose or object to the reduced sanction stated above.

The commission adopts the amendment to sanctions and incorporates the stipulation, finding that respondent's actions violated Jud.Cond.R. 4.3(A), and orders respondent to pay the costs of the proceedings, pay Ms. Bremke's attorney's fees in the amount of \$3,040, and pay a \$1,000 fine in lieu of a public reprimand.

The secretary is directed to issue a statement of costs before the commission as well as instructions regarding payment of the fines and costs. Payment of all monetary sanctions must be made by respondent on or before December 31, 2024. This opinion is to be published by the Supreme Court's Reporter of Decisions.