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DEC 30 2011

CLERK OF COURT
SUPREME COURT OF OHIO

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

In re: Judicial Campaign Complaint :
Against Mark Davis : Case No. 2011-1855
:

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 pursuant to Gov.Jud.R. II, Section 5(D)(1) and R.C. 2701.11. The commission members are: Judges Barbara Gorman, David Ellwood, Joseph Houser, Lisa Sadler, and Thomas Swift.

On October 17, 2011, the complainant, the Lucas County Democratic Party filed a grievance with the Board of Commissioners on Grievances and Discipline of the Supreme Court. The complaint alleged that the respondent, Mark Davis, had violated Jud.Cond.R. 4.3(A), 4.3(F) and 4.3(G) by distributing or causing to be distributed printed campaign material that falsely states the respondent "graduated with honors from Miami University with degrees in Finance, Economics, French and German" and that "[i]n fact, he was graduated with honors in degrees in Law, International Law, Finance, Economics, French and German." In addition, the complaint alleged the respondent broadcast a television commercial falsely stating the respondent "has earned six college degrees in seven years."

Following a review by a probable cause panel of the Board of Commissioners pursuant to Gov.Jud.R. II, Section 5(B), the Secretary of the Board filed a formal complaint on October 25, 2011 alleging that the respondent, during the course of his judicial campaign violated Jud.Cond.R. 4.3(A), 4.3(F) and 4.3(G) through the aforementioned statements.

On November 1, 2011, a hearing panel appointed by the Board of Commissioners on Grievances and Discipline conducted a hearing on the allegations contained in the formal complaint. On November 2, 2011, the hearing panel issued its findings of fact, conclusions of law, and recommendations in this matter. The panel found the respondent's campaign materials violated Jud.Cond.R. 4.3(A) [a judicial candidate shall not knowingly or with reckless disregard disseminate information concerning the judicial candidate, either knowing the information to be false or with a reckless disregard of whether or not it false, or if true, that would be deceiving or misleading to a reasonable person], Jud.Cond.R. 4.3(F) [a judicial candidate shall not knowingly or with reckless disregard misrepresent his or her qualifications or other fact], and Jud.Cond.R. 4.3(G) [a

judicial candidate shall not knowingly or with reckless disregard make a false statement concerning the formal schooling or training completed by the judicial candidate or a degree, diploma, certificate, scholarship, grant, award, prize of honor received, earned or held by the judicial candidate].

On November 2, 2011, the Supreme Court of Ohio appointed this five-judge commission to review the hearing panel's report pursuant to Gov.Jud.R. II, Section 5(D)(1). We met by telephone conference on November 4, 2011 and December 1, 2011. On November 4, 2011 we issued an order pursuant to Gov.Jud.R. II, Section 5(D)(2) for the respondent to immediately and permanently cease and desist from using campaign materials that indicate the respondent has earned more than two college "degrees," that his major or minor areas of study are separate college "degrees," and that his Certificate in International Trade and Development is a college "degree". In addition, we required the respondent to file an affidavit on November 7, 2011 detailing the steps he had taken to comply with our interim cease and desist order. The complainant subsequently filed an affidavit on November 7, 2011 alleging the respondent had not complied with the interim cease and desist order because he failed to remove references to his multiple degrees on the social networking site www.facebook.com and his campaign web page.

In addition, on November 7, 2011, the respondent filed objections to the Board of Commissioner's hearing panel report. We permitted the complainant to file an answer brief and the respondent a reply brief. In addition, the complainant filed instanter a sur-reply brief in support of its answer on November 29, 2011, and the respondent subsequently filed a memorandum in opposition to sur-reply on December 7, 2011. We grant the complainant's motion instanter to file a sur-reply and consequently also accept the respondent's memorandum in opposition.

We conclude the record supports the hearing panels' finding and contains clear and convincing evidence that the respondent's campaign materials falsely stating his educational credentials were in violation of Jud.Cond.R. 4.3(A), 4.3(F) and 4.3(G).

The record reveals the respondent equated the major and minor courses of study in his undergraduate education to additional degrees earned at Miami University and the Ohio State University Moritz College of Law. In addition, he designated a certificate earned during law school as an additional degree to his juris doctorate degree. The designation of major or minor courses of study and a certificate at institutions of higher education as separate degrees is not an accurate representation of the actual degrees awarded by each institution. Only two degrees were earned by the respondent, not six separate degrees in a seven year period. Due to the evidence presented, we agree with the hearing panel that the statements as used in the context of the respondent's advertising were false and would be deceiving or misleading to the reasonable person.

Sanctions

The hearing panel recommended that we issue an interim cease and desist order and order the respondent to pay the cost of these proceedings. The hearing panel did not recommend any disciplinary sanctions against the respondent. Gov.Jud.R. II, Section (5)(D)(1) authorizes this commission to order the imposition of a disciplinary sanction against the respondent. We believe the actions of the respondent in this matter warrant additional sanctions to address the severity of his conduct and deter similar violations in the future by the respondent and other candidates.

The five-judge commission is troubled by the respondent's objections to the hearing panel's findings, recommendations and conclusions. The respondent is defiant in his initial objections to the panel's report and subsequent filings that no violations have occurred. He continued to argue throughout the proceedings before this commission that his campaign statements regarding his educational achievements were factually correct and that his minor fields of study and certificate were tantamount to degrees earned by each institution. The various arguments the respondent has put forth are not persuasive and merely underscore his unwillingness to admit his attempt to deceive the public through his campaign materials. Indeed, the closest the respondent comes to an admission is in his reply brief where he indicates the voters were not harmed, but only the respondent was harmed because he lost the election due to his own stupidity. The respondent has repeatedly failed in these proceedings to recognize that his actions erode the public's respect for the judiciary. Consequently, in light of the record before us, we have determined that the appropriate sanction is a public reprimand.

A public reprimand has been determined to be the appropriate sanction in similar cases before the five-judge commission when respondents have presented facts about themselves or other candidates that were false. In 1998, this commission found a statement by a candidate was false and contrary to former Ohio Canon 7(E)(1) when the candidate stated the opponent judge had imposed a tax on county residents despite a fundamental principle in our form of government that the judiciary does not impose taxes. *In re Judicial Campaign Complaint Against Kienzle*, 96 Ohio Misc.2d 31, 708 N.E.2d 800 (1999).

We also agree with the complainant's observation the respondent did not comply with our interim cease and desist order of November 4, 2011 and failed to remove his multiple degree reference on his Facebook and campaign web pages.

Due to the clear and deliberate effort made by the respondent to deceive the public, coupled with his failure to completely abide by our interim cease and desist order, we also impose a fine of \$5,000.

It is the unanimous conclusion of this five-judge commission that respondent be publicly reprimanded for his violations of Canon 4 of the Code of Judicial Conduct and that he be fined \$5,000. We also agree with the recommendation of the hearing panel that the respondent pay the costs of these proceedings. We additionally order the

respondent to pay the complainant's reasonable and necessary attorney fees and expenses of \$9,635.50.

The Secretary shall issue a statement of costs before this commission and instructions regarding payment of the monetary sanctions. Payment of all monetary sanctions shall be made on or before March 1, 2012.

SO ORDERED.

Judge David A. Ellwood, Chair

Judge Barbara P. Gorman

Judge Joseph M. Houser

Judge Lisa L. Sadler

Judge Thomas A. Swift

Dated: December 29, 2011