

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-1855

In re:	:	
Judicial Campaign Complaint	:	JUDICIAL CASE NO. 11-J-06
Mark A. Davis	:	
Respondent	:	PANEL REPORT with FINDINGS OF FACT,
Lucas County Democratic Party	:	CONCLUSIONS OF LAW and RECOMMENDATIONS
Complainant	:	

PROCEDURAL BACKGROUND

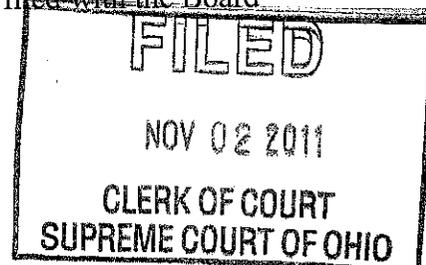
1. This matter was heard on November 1, 2011, by a duly authorized panel of the Board of Commissioners on Grievances and Discipline (the Board) pursuant to Gov. Jud. R. II, Section 5, and Gov. Bar R. V upon a judicial campaign complaint filed by Lucas County Democratic Party (Complainant) against Mark A. Davis (Respondent).

2. Complainant was represented by counsel, Donald McTigue. Respondent was present and preceded pro se.

3. The hearing panel consisted of three current or former Board members: Attorney Nancy Moore of Franklin County, Christine Schulman (public member), and Attorney Lawrence R. Elleman of Cincinnati.

4. The complaint involves a judicial campaign in Lucas County, Ohio, for the Toledo Municipal Court.

5. On October 17, 2011, a judicial campaign grievance form was filed with the Board



which claimed that Respondent was utilizing deceptive campaign material (literature and television advertisement) in violation of Jud. Cond. R. 4.3.

6. October 24, 2011, a probable cause panel, as set forth in Gov. Jud. R. II, Section 5(B), issued a report in which the panel found that probable cause existed for the filing of a formal complaint regarding the campaign material of Respondent in that they may violate Jud. Cond. R. 4.3(A), 4.3(F), and 4.3(G).

7. A formal complaint alleging a violation of Jud. Cond. R. 4.3(A), 4.3(F), and 4.3(G) was filed by the Board on October 25, 2011.

8. Only the Respondent testified at the formal hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a candidate for an open position of the Toledo Municipal Court to be decided in the general election on November 8, 2011.

2. Respondent is not a judge.

3. For purposes of promoting his campaign for the Toledo Municipal Court, Respondent is distributing or causing to be distributed printed campaign material that falsely states that Respondent “graduated with honors from Miami University with degrees in Finance, Economics, French and German” and that “In fact, he was graduated with honors in degrees in Law, International Law, Finance, Economics, French and German.”

4. Respondent is broadcasting a television commercial promoting his campaign that falsely states that Respondent “has earned six college degrees in seven years.”

5. Respondent has only two college degrees, an undergraduate Bachelor of Science in

Business from Miami University and a Juris Doctor Degree from The Ohio State University Moritz College of Law. His undergraduate studies at Miami included majoring in Finance and Business Economics and minoring in French and German while earning only one degree.

6. Respondent also claims a second degree received concurrently with his law degree. However, Respondent's claimed degree is actually only a Graduate Certificate in International Trade and Development, not a separate degree from The Ohio State University.

7. Respondent presented evidence that a major or minor course of study may be commonly referred to a "major degree" or a "minor degree." However, the panel finds by clear and convincing evidence that the use of the term "degree" in the context of Respondent's advertising material is false without further explanation that he received only two college degrees.

8. The panel further finds by clear and convincing evidence that reference to the Graduate Certificate of International Trade and Development as a separate degree is false.

9. The panel finds by clear and convincing evidence that the Respondent's use of the above described terms in his advertising material was knowingly false or made with reckless disregard for the truth and would be deceiving or misleading to a reasonable person.

10. Respondent's campaign materials and the statements contained in those materials violate 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 was 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].

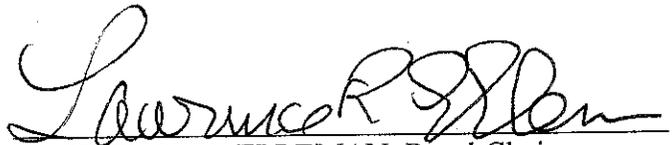
11. Respondent has not previously violated Canon 4.

RECOMMENDATION

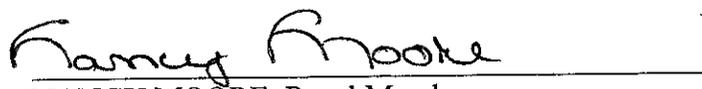
Having found by clear and convincing evidence that a violation of Canon 4 has occurred, the panel recommends that this matter be considered as an expedited matter and that the five-judge commission should issue an interim and permanent cease and desist order to prohibit use of campaign material by Respondent that:

- a. Respondent has earned more than two college degrees;
- b. Respondent's major or minor areas of study are separate college "degrees"; and
- c. Respondent's Certificate in International Trade and Development is a college "degree".

Respondent should be ordered to pay the cost of these proceedings.


LAWRENCE R. ELLEMAN, Panel Chair


CHRISTINE SCHULMAN, Panel Member


NANCY MOORE, Panel Member