

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

In re Judicial Campaign Complaint
Against Mark Davis

Case No. 11-1855

**GRIEVANT'S MOTION FOR LEAVE TO FILE INSTANTER A SUR-REPLY IN
FURTHER SUPPORT OF ITS ANSWER BRIEF**

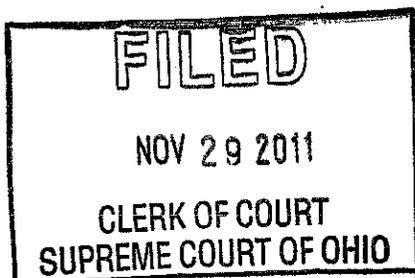
Grievant hereby moves for leave to file a Sur-Reply to Respondent Mark Davis's Reply Brief, filed November 28, 2011. In his Reply Brief, Section II(A), pages 1-2, Respondent makes serious misstatements regarding the proceedings and actions of what he terms the "Board of Elections," which is actually the Ohio Elections Commission. Grievant desires to clarify the record as the Commission of Five Judges may not be as familiar with the Ohio Elections Commission process. Accordingly, Grievant seeks leave to file instanter its concise Sur-Reply, which is attached hereto as Exhibit "A."

Respectfully submitted,



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Counsel for Grievant



CERTIFICATE OF SERVICE

This is to certify a copy of the foregoing was served by e-mail and regular U.S. mail on this the 29th day of November, 2011, upon the following:

Mark Davis, Esq.
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Toledo, Ohio 43604



Donald J. McTigue
Attorney at Law

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GRIEVANT'S SUR-REPLY IN FURTHER SUPPORT OF ITS ANSWER BRIEF

Respondent Mark Davis's November 28, 2011 Reply Brief, Section II(A), pages 1-2, contains serious misstatements regarding the proceedings and actions of what he terms the "Board of Elections," which is actually the Ohio Elections Commission.

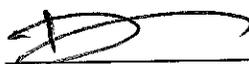
Respondent states in the heading for Section II(A) that "[t]he Board of Elections [Ohio Elections Commission] found for Respondent upon the same issue," and later states, "[the Ohio Elections Commission] ruled upon the very same issue." These statements are incorrect in two regards. First, the Commission did not rule in Respondent's favor. More accurately, the Ohio Elections Commission needed four votes, as required by R.C. §3517.152(G)(3), to take any action. Two of the seven Commissioners were absent from the hearing and the five who were present split 3-2. Without four votes to take any action one way or the other, the case was then administratively dismissed with the right to re-file it. Thus, the Ohio Elections Commission's vote is not considered by the Commission as a ruling on the merits or a finding in either party's favor.

Second, the Commission did not rule "upon the very same issue" as Respondent claims. Judicial Canon 4 requires more of judicial candidates than the elections false statement statute. The Ohio Elections Commission applies R.C. §3517.21(B)(10), which prohibits a person, either knowingly or with reckless disregard of the truth, from making a false statement. Jud. Cond. R.

4.3(A), on the other hand, states that “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.” (Emphasis added). In the pending matter, Respondent, at a minimum, deceived and misled the electors and general public regarding his educational experience during his 2011 campaign for Judge of the Toledo Municipal Court through television ads and the distribution of thousands of pieces of printed campaign material.¹

For the foregoing reasons, which supplement Grievant’s Reply Brief, the decision of the Commission Panel should be affirmed, the Commission should impose sanctions against Respondent, and Grievant should be awarded reasonable attorneys’ fees and expenses.

Respectfully submitted,



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¹ Respondent also states that “[t]he Board of Commissioners [Ohio Elections Commission] held a hearing across two days . . .” Grievant wants to clarify that the Ohio Elections Commission hearing lasted approximately 4 hours total. It started very late in the afternoon on the first day. It was continued to a second day because the front door of the Wyandot Building, where the Commission is located, is locked at 5:30 p.m.

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