

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

12-1186

In Re: :  
Judicial Campaign Complaint against: : Case No. 12-045  
Jeanette Moll (0066786) :  
Respondent : PANEL FINDINGS,  
CONCLUSIONS, AND  
RECOMMENDATIONS  
Lynn Rife :  
Complainant :

FILED  
JUL 16 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

INTRODUCTION

{¶1} This matter came on for hearing in Columbus, Ohio, on July 6, 2012, pursuant to Section 5(C)(3) of Rule II of the Supreme Court Rules for the Government of the Judiciary of Ohio, before a panel consisting of Martha Butler Clark, a nonattorney member of the Board of Commissioners, the Honorable Harvey J. Bressler, and David E. Tschantz, panel chair, all of whom are duly qualified members or former members of the Board of Commissioners on Grievances and Discipline. None of the panel members resides in the appellate district from which the complaint originated. The Complainant Lynn Rife appeared at the hearing and was represented by David F. Axelrod and Michael W. Karam. The Respondent Jeanette Moll also appeared and was represented by Mark R. Weaver and George B. Limbert.

{¶2} The complaint in this matter contains three counts. Count I alleges that the Respondent is a candidate for the Fifth District Court of Appeals; that she is currently not a judge in the State of Ohio and has not been a magistrate in the State of Ohio since 2007; that campaign

materials distributed by her committee and her Facebook page contain a photograph of her in a judicial robe; that the photograph creates a false impression of being a current judge or magistrate; that the photograph was posted, published, circulated, or distributed by the Respondent and that she did so either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that it would be deceiving or misleading to a reasonable person. Count II alleges that the Respondent's campaign materials state that the Respondent, in her capacity as a magistrate, "Heard Over 2000 Cases;" that this statement connotes to a reasonable person something more than working on an aspect of a case, such as an arraignment, a 30-minute child support contempt hearing, or a dissolution or mental illness confinement hearing that lasted 15 to 20 minutes; that this statement was posted, published, circulated, or distributed by the Respondent and that she did so either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that it would be deceiving or misleading to a reasonable person. Count III alleges that the Respondent's campaign materials state that the Respondent, in her capacity as a magistrate, was "Never Reversed On Appeal;" that this statement is misleading to a reasonable person in that it conveys the impression that the Respondent was the judge of record regarding the matters that came before her when, in fact, the judge for whom she worked was required to either adopt, modify, or reject her recommended findings or conclusions, and it was the judge's decision that was subject to review on appeal; that this statement was posted, published, circulated, or distributed by the Respondent and that she did so either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that it would be deceiving or misleading to a reasonable person.

{¶3} All three counts were fully heard at the hearing, but Counts II and III were dismissed at the close of the Respondent's case because the Complainant failed to prove by clear and convincing evidence the alleged misconduct set forth in those counts.

{¶4} The panel concludes that the Complainant proved Count I by clear and convincing evidence that the Respondent has violated these rules of the Ohio Code of Judicial Conduct: Jud. Cond. R. 4.3(A) [knowing or reckless use of false or misleading campaign literature]; Jud. Cond. R. 4.3(C) [use of the title "judge" in a manner that implies that she currently holds that office]; and Jud. Cond. R. 4.3(F) [misrepresentation of her identity, qualifications or present position].

### FINDINGS OF FACT

{¶5} The Respondent is currently a judicial candidate for the Fifth District Court of Appeals in the November 6, 2012, general election and is not currently a judge in that court. She served as a magistrate in the Guernsey County Court of Common Pleas from January 1997 until January 2007. This is the first time she has ever sought an elected judicial office and she has no prior disciplinary record.

{¶6} The Respondent's campaign materials that were admitted as evidence at the hearing are as follows:

- **Complainant's Exhibit 1**—The brochure distributed by the Respondent in her primary campaign, which is a two-sided multi-color document the front side of which contains a photograph of the Respondent in a judicial robe and both sides of which contain the header "Jeanette Moll For Judge." The back side also lists her purported qualifications in resume format, the pertinent portion of which reads as follows:

- Magistrate, Guernsey County
  - Court of Common Pleas
  - Heard Over 2,000 Cases
  - Never Reversed on Appeal
  - Strict Constructionist | Conservative

Neither side of this document lists the dates that she served as a magistrate nor states that she is not currently a magistrate or judge.

- **Complainant's Exhibit 5**—The portion of her Facebook page containing the same photograph as that shown in Complainant's Exhibit 1, but also containing this language directly above the photograph:

Public office experience: Magistrate, jointly appointed for general-domestic relations and probate-juvenile divisions, Guernsey County Court of Common Pleas, August 1997-April 2007, court mediator, April 1997-July 2007; law clerk, January 1....See More

- **Complainant's Exhibit 6**—The portion of a Candidate profile section pertaining to the Respondent published by the Canton Repository on its website using material provided by the Respondent containing the same photograph as that shown in Complainant's Exhibit 1 and containing substantially the same language next to the photograph as that shown in Complainant's Exhibit 5.
- **Respondent's Exhibit V**—A campaign flyer containing pictures of the Respondent in dress clothing as an attorney arguing a case before a court.

## ANALYSIS AND CONCLUSIONS

### Count I

{¶7} With regard to the three Complainant's exhibits listed above and admitted into evidence, the panel must determine which, if any, of said exhibits would be deceiving or misleading to a reasonable person because it contains a photograph of her in a judicial robe. The panel agrees with the conclusion of the panel in the case of *In re Judicial Campaign Complaint Against Lilly, 4/19/2012 Case Announcements, 2012-Ohio-1720*, that use of a photograph of a judicial candidate in a judicial robe is not a *per se* violation of Canon 4, but such a photograph

can be misleading if not accompanied by a prominent and accurate statement that the candidate is a former judge or magistrate rather than a sitting judge. *Cf.* Board of Commissioners on Grievances and Discipline Advisory Opinion No. 2003-8 (relating to a campaign photograph of a magistrate wearing a robe).

{¶8} In this case, Complainant's Exhibits 5 and 6—while they contain the photograph of the Respondent in her robe—also clearly state, in close proximity to each photo, information concerning the dates of the Respondent's service as a magistrate. The panel finds that this express notice would vitiate any belief on the part of a reasonable person created by the photo that the Respondent is a sitting judge or magistrate.

{¶9} However, the panel also finds that Complainant's Exhibit 1, the flyer, creates a false impression that she is a current judge or magistrate in two ways. First, although the Respondent appears in a judicial robe on the front side of the flyer, there is no accompanying verbiage or dates on that side of the flyer that advise the reader that she is a former magistrate. Secondly, the qualifications listed in bullet point form on the back side of the flyer describe her as "Magistrate, Guernsey County," again with no accompanying verbiage or dates that advise the reader that she is a former magistrate. The panel believes that this lack of express notice is not vitiated, as the Respondent argued at the hearing and in her prehearing brief, by the use of the words "For Judge" and the use of the past tense in the bullet points that describe her service as a magistrate; *i.e.*, "Heard Over 2,000 Cases" and "Never Reversed on Appeal." In the opinion of the panel, even if the reasonable person reading the flyer assumes from the words "For Judge" that the Respondent is not a sitting judge, the reader is still left with the impression that she is a sitting magistrate. With regard to the career and service bullet points, the panel finds that these

types of descriptions are commonly used, and used in the past tense, by sitting judges running for reelection and, therefore, do not adequately convey to the reader that she is a former magistrate.

{¶10} The panel further finds that the Respondent was put on notice of Rule 4.3 and Opinion 2003-08 by her attendance at a Judicial Candidates Seminar on August 18, 2011 and she is charged with the knowledge of both. Therefore, her use of Complainant's Exhibit 1 was either knowingly false or with a reckless disregard for whether or not it was false, or if true, would be deceiving or misleading to a reasonable person.

{¶11} The panel therefore finds that the Complainant has proven Count I by clear and convincing evidence that the Respondent violated Jud. Cond. R. 4.3(A), 4.3(C), and 4.3(F).

### **Count II**

{¶12} Count II alleges that the statement in the Respondent's campaign materials that she, in her capacity as a magistrate, "Heard Over 2000 Cases" connotes to a reasonable person something more than working on an aspect of a case, such as an arraignment, a 30-minute child support contempt hearing, or a dissolution or mental illness confinement hearing that lasted 15 to 20 minutes; that this statement was posted, published, circulated, or distributed by the Respondent and that she did so either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that it would be deceiving or misleading to a reasonable person. Based on the evidence presented in the Complainant's case, the panel unanimously concluded that the Complainant failed to prove by clear and convincing evidence the charged violation of Jud. Cond. R. 4.3(A) and dismissed this count on the record.

### **Count III**

{¶13} Count III alleges that the statement in the Respondent's campaign materials that she, in her capacity as a magistrate, was "Never Reversed On Appeal"; is misleading to a

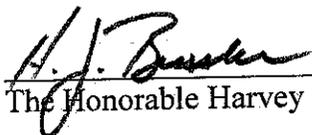
reasonable person in that it conveys the impression that the Respondent was the judge of record regarding the matters that came before her when, in fact, the judge for whom she worked was required to either adopt, modify or reject her recommended findings or conclusions, and it was the judge's decision that was subject to review on appeal; that this statement was posted, published, circulated, or distributed by the Respondent and that she did so either knowing the information to be false or with a reckless disregard of whether or not it was false or, if true, that it would be deceiving or misleading to a reasonable person. Based on the evidence presented in the Complainant's case, the panel unanimously concluded that the Complainant failed to prove by clear and convincing evidence the charged violation of Jud. Cond. R. 4.3(A) and the panel dismissed this count on the record.

#### **RECOMMENDATION**

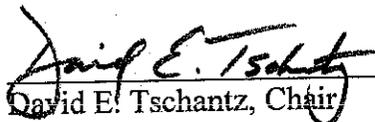
{¶14} Evidence presented at the hearing indicates that the Respondent may still be violating Jud. Cond. R. 4.3(A), 4.3(C), and 4.3(F) and may continue to do so unless ordered to cease and desist. The Respondent testified that she has made efforts to remove Complainant's Exhibit 1 from circulation, however the panel is not satisfied that all reasonable efforts have been made to do so. The panel recommends that this matter be considered on an expedited basis and that the five-judge commission issue interim and permanent cease and desist orders that the Respondent immediately and permanently cease from using Complainant's Exhibit 1. The panel further recommends that Respondent be ordered to file an affidavit with the five-judge commission affirming that she has contacted every Republican Party county headquarters that exists within the Fifth Appellate District and an executive officer of every other organization to whom she or her committee distributed Complainant's Exhibit 1 and requested and received in return written or emailed assurance from each person contacted, or an agent or employee of that

person, that a search was made and no undistributed copies of Complainant's Exhibit 1 were found, or that those found were destroyed or have been returned to her, and that any that might be found in the future will be destroyed or returned to her. The panel further recommends that Respondent be instructed to visit the Stark County Republican Party Headquarters and personally inspect the available literature to ensure that no copies remain in that office.

{¶15} The panel also recommends that the Respondent be assessed a fine of \$1,000 and the costs of this proceeding, but that the fine be stayed on condition of no further violations of the Code of Judicial Conduct relating to judicial campaign conduct. The panel does not recommend an award of attorney fees in this case, as requested by the Complainant.

  
The Honorable Harvey J. Bressler

  
Martha Butler Clark

  
David E. Tschantz, Chair

