ORIGINAL

IN THE SUPREME COURT OF OHIO

In re: Judicial Campaign Complaint Against Jeanette Moll,	:	**Case No. 2012-1186**
Respondent.	:	**PROCEEDINGS BEFORE THE FIVE JUDGE COMMISSION APPOINTED PURSUANT TO RULE II, SECTION 5(D)(1) OF THE SUPREME COURT RULES FOR THE GOVERNMENT OF THE JUDICIARY OF OHIO, AND SECTION 2701.11 OF THE OHIO REVISED CODE**

COMPLAINANT LYNN RIFE'S OBJECTIONS TO THE HEARING PANEL'S DENIAL OF ATTORNEY FEES

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SUPREME COURT OF OHIO

COMPLAINANT LYNN RIFE'S OBJECTIONS TO THE HEARING PANEL'S DENIAL OF ATTORNEY FEES

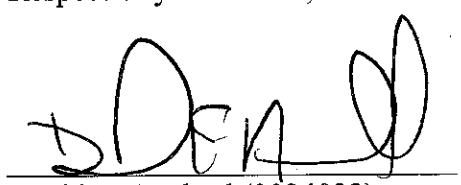
Complainant Lynn Rife, by and through her undersigned counsel, respectfully submits these objections to the Hearing Panel's denial of attorney fees. Complainant seeks an award of attorney fees on the following grounds:

- The Hearing Panel's concern that Respondent may still be violating Judicial Cond. R. 4.3(A) at the time of the hearing and might continue to violate it without an interim cease and desist also warrants an award of attorneys;
- Respondent has shown no remorse or made an apology:
- Respondent sent a letter to Franklin County Prosecutor Ron O'Brien containing reckless, inaccurate allegations, and requesting a Grand Jury investigation of the a witness who testified at the hearing (*see* Affidavit of Lynn Rife, sworn to August 10, 2012, attached as Exhibit A to Complainant's Lynn Rife's Motion to Supplement the Record, or Alternatively, to Remand to the Hearing Panel for the Receipt of Additional Evidence of Respondent's Continuing Violations of Canon 4, filed simultaneously herewith);
- Respondent also recklessly requested Mr. O'Brien to open an ethics investigation regarding undersigned counsel Sue Ann Reulbach's participation in the hearing before the panel without conducting the most basic investigation, which would have revealed that Reulbach is a retired Franklin County senior assistant prosecutor (*id.*);
- Respondent filed a response to the Hearing Panel's decisions, which contained affidavits that are outside the record, introducing testimony of people who did not testify at the hearing (*id*);

- Respondent recklessly sent a complaint to the Disciplinary Counsel regarding this matter but was told no action could be taken that because this case was still pending before this Court (*id.*); and
- Respondent's behavior has required the expenditure of many hours of attorney time and resources to deal with her unfounded, frivolous, false and/or reckless claims and arguments.

For these reasons and for the additional reason stated below, Complainant seeks the award of attorney fees. Should the Commission determine to award attorney fees, we request leave to supplement the record with evidence of attorney time and expenses in this matter.

Respectfully submitted,



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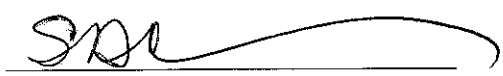

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MEMORANDUM OF LAW

Hearing Panels and Commissions have awarded attorney fees in cases involving far less serious misconduct than this one, taking into account Respondent's post-hearing behavior.

A candidate must independently measure the propriety of their actions against the standards contained in Cannon 7 and will be held accountable if conduct falls short. *In re Judicial Campaign Complaint Against Hildebrandt* (1997), 82 Ohio Misc. 2d 1, is illustrative. There, the Commission found that the sanctions were inadequate given the gravity of Respondent's violations and need to deter similar misconduct by judicial candidates in the future. Attorney fees were found to be appropriate given the public interest served by the Complainant's prosecution of the grievance.

Additionally, the Commission found that more goes into sanction decision that the violations. The respondent's attitude in correcting the original problem, the behavior that occurs as a result of the original complaint, must also be a consideration as to sanctions. Complainant Lynn Rife's Memorandum in Opposition to Respondent's Objections to Panel Findings of Fact, Conclusions of Law, and Recommendations, filed simultaneously herewith, describes Respondent's unrepentant attitude and post-hearing behavior.

In *Hildebrandt*, the Commission observed that Respondent failed to take timely and effective steps to remove the offending photograph, which provided a basis for awarding attorney fees to the Complainant. Here, despite her claim of having done so, it was demonstrated at the hearing that Respondent had failed to halt dissemination of the offending brochure. This is reflected in the Hearing Panel's Recommendations, and the Commission's interim cease and desist order.

In *In re Hein* (1999), 95 Ohio Misc. 2d 31, 760 N.E. 2nd 34 is a seminal case. There, the Commission was concerned with Respondent's unfamiliarity with Ohio Judicial Code Cannon 7, and his cavalier attitude toward obtaining greater understanding. Here, Respondent states she was concerned about her use of the judicial robe in her flyer, sought advice from attorney colleagues but then did nothing more to make sure her behavior was in line with Cannon 7. Additionally, her objections to the Hearing Panel's findings and recommendations are rife with evasion, feigned ignorance and avoidance of responsibility.

Similarly, In re Judicial Campaign Against Morris (S.Ct. 1997) 81 Ohio Misc. 2d 64, the Commission found that statements about the judicial candidates were harmful to the judiciary as an institution, and as a result, monetary fines were insufficient to correct the behavior and deter future behavior. *Morris* and *Hein* added attorney fees as an additional sanction – both for the same reason.

In *In re Judicial Campaign Complaint Against Kienzle* (S. Ct. 1999) 96 Ohio Misc. 2d 31, 708 N.E. 2d 800, the Commission considered that the Respondent was an educator, attorney and judicial office holder, and was troubled by his behavior and ignorance of campaign laws. In this case, the respondent has been a lawyer for 17 years, a magistrate for 10 years and is running her third campaign.

In sum, when viewed in its entirety, Respondent's conduct during the campaign, at the hearing and afterward is contrary to the principles of Canons 4 and 7 of the Code of judicial Conduct. Her lack of candor with the Hearing Panel and this Commission, and continued misconduct, have warranted an enormous expenditure of attorney time and resources. Attorney fees therefore should be awarded. *See* Affidavits of David F. Axelrod and Lynn Rife, sworn to August 10, 2012, attached as Exhibit A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Complainant Lynn Rife's Objections to the Hearing Panel's Denial of Attorney Fees, has been served, this 10th day of August, 2012, by regular United States Mail, on the following:

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Respondent Pro Se

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D. Allan Asbury, Esq.
Administrative Counsel
The Supreme Court of Ohio
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65 South Front Street
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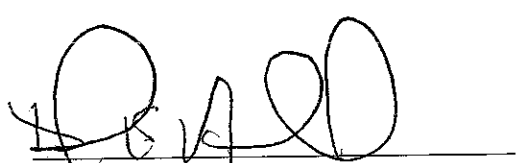
Additionally, true and accurate copies of the foregoing have also been served this 10th day of August, 2012, by facsimile on Respondent at 740.297.7782, and by email on Mr. Asbury at a.asbury@sc.ohio.gov.



David F. Axelrod