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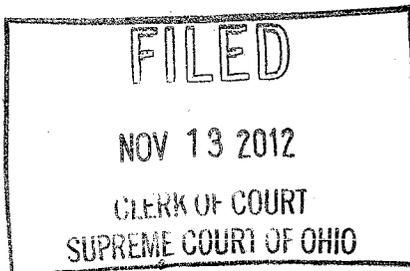
IN THE SUPREME COURT OF OHIO

Case No. 2012-1653

In Re: Judicial Campaign Complaint
Against Colleen Mary O'Toole

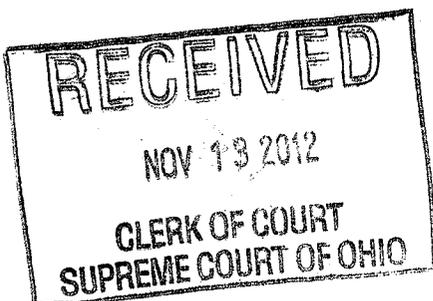
On Appeal from the Decision of a Five Judge Commission
Empaneled Pursuant to Ohio R. Gov. Jud. II Section 5(D)

RESPONDENT COLLEEN MARY O'TOOLE'S MOTION TO STAY THE SANCTIONS
IMPOSED AGAINST HER PENDING HER APPEAL TO THIS COURT, INCLUDING MONETARY
SANCTIONS TO BE PAID ON OR BEFORE NOVEMBER 15, 2012



J. MICHAEL MURRAY (0019626)
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Counsel for the Respondent



Respondent Colleen Mary O'Toole, by and through undersigned counsel, hereby respectfully moves for an Order staying the imposition against her of the sanctions imposed by the Five Judge Commission in the captioned matter, in its Order entered October 25, 2012.¹

The sanctions in question include the imposition of monetary penalties which, absent an Order from this Court granting a stay, will require the Respondent to pay substantial sums, outlined below, on or before November 15, 2012.

The sanctions include: (a) a fine of One Thousand Dollars (\$1,000.00); (b) the payment of the attorney fees and costs of the complainant, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00); (c) the payment of costs in the amount of Two Thousand Five Hundred Thirty Dollars Eighty Two Cents (\$2,530.82), and; (d) the issuance of a public reprimand.²

On November 9, 2012, Respondent filed an appeal to this Court from the decision and order of the Five Judge Commission.³

¹A copy of the Order of the Five Judge Commission, together the Instructions Regarding Payment of Fine, Costs and Attorney Fees issued in connection with that Order, are attached hereto as Exhibit A.

²The Five Judge Commission adopted the recommendation of the Hearing Panel, and thus also its injunction mandating that the Respondent alter her campaign website to make clear that she was not running for election as a sitting judge, and to cease using a name badge which the Hearing Panel found could mislead a reasonable person into believing she was an incumbent judge seeking reelection. The Hearing Panel issued its Findings, Conclusion and Recommendations, a copy of which is attached hereto as Exhibit B, on October 1, 2012. The Five Judge Commission entered an Order compelling compliance with those recommendations, a copy of which is attached hereto as Exhibit C, on October 5, 2012. Pursuant to that Order, the Respondent submitted an Affidavit of Compliance to this Court, on October 9, 2012, a copy of which is attached hereto as Exhibit D. The judicial election in question, of course, is now over.

³A copy of her Notice of Appeal is attached hereto as Exhibit E.

On the same day, she filed with the Five Judge Commission a Motion seeking a stay of the imposition of sanctions against her pending the resolution of her appeal to this Court.⁴ As of November 12, 2012, the Respondent has not received a ruling on that Motion.

Because the deadline by which she must pay substantial monetary sanctions is imminent, the Respondent now also respectfully moves this Court for an Order staying the imposition of sanctions against her, including both the imposition of a public reprimand and the payment by her of the fines, fees and costs outlined above, pending the resolution of her appeal in this Court.

The basis for this motion is as follows.

The Respondent is alleged to have violated Rule 4.3(A) of the Ohio Code of Judicial Conduct through the use of misleading campaign materials, with the capacity to mislead voters into the erroneous belief that she was an incumbent judge seeking reelection to the Eleventh District Court of Appeals, rather than a former member of that Court seeking to be returned to the bench.

The Respondent argued, inter alia, below that: (a) the materials in question could not, as a matter of fact, have mislead reasonable persons into that mistaken belief, and; (b) that in any event, the prohibitions of Rule 4.3 violated her right to engage in political expression protected under the First and Fourteenth Amendment, both on their face and as applied to her.

Whether these defenses prevail on appeal depends in substantial part upon the resolution of important First Amendment questions, which remain to be decided by this Court, and which are best decided by a court of last resort.

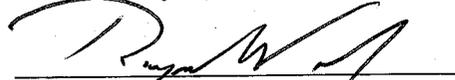
If the Respondent is compelled to pay substantial fines and costs now, and is reprimanded, but is ultimately vindicated on appeal, she will have suffered a very real, and a comparatively immediate punishment in the meantime.

⁴A copy of that Motion is attached hereto as Exhibit F.

If, on the other hand, she does not prevail, she will – in due time, and after the full measure of due process afforded her under the Rules for the Government of the Judiciary – pay the price.

Respondent respectfully requests that the public reprimand and the imposition of sanctions against her be stayed until the appeal vouchsafed to her in the Rules for the Government of the Judiciary has been allowed to run its course.

Respectfully submitted,



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Counsel for the Respondent

FILED

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

OCT 24 2012

CLERK OF COURT
SUPREME COURT OF OHIO

In re Judicial Campaign Complaint
Against Colleen Mary O'Toole

Case No. 2012-1653

ORDER

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 on October 3, 2012, pursuant to Gov.Jud.R. II(5)(D)(1) and R.C. 2701.11. The commission members are Judge Peggy L. Bryant, chair; Judge Richard K. Warren; Judge David A. Ellwood; Judge R. Scott Krichbaum; and Judge Mark K. Wiest.

The complainant, James Davis, filed a complaint with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio alleging that the respondent, Colleen Mary O'Toole, had violated various provisions of Canon 4 of the Code of Judicial Conduct. The respondent served on the Eleventh District Court of Appeals for a six-year term ending in 2010 and is now running for judicial office on the same court. Following a review by a probable-cause panel of the board pursuant to Gov.Jud.R. II(5)(B), the secretary of the board filed a formal complaint alleging that the respondent, during the course of a judicial campaign, committed violations of Jud.Cond.R. 4.3(A) (a judicial candidate shall not knowingly or with reckless disregard distribute information concerning the judicial candidate that would be deceiving or misleading to a reasonable person) and 4.3(F) (a judicial candidate shall not misrepresent his or her identity, qualifications, present position, or other fact or the identity, qualifications, present position, or other fact of an opponent).

The formal complaint was heard by a hearing panel of the Board of Commissioners on Grievances and Discipline on September 18, 2012, and the hearing panel issued a report of its findings, conclusions, and recommendations on October 1, 2012. In the report, the hearing panel dismissed Count I of the complaint, but found clear and convincing evidence that the respondent had violated Jud.Cond.R. 4.3(A) as alleged in Counts II and III of the complaint by giving the false impression that she is currently a sitting judge by (1) failing to include her dates of service as a judge and identifying herself as "Judge O'Toole" on her website and (2) wearing a name badge in public that reads "Colleen Mary O'Toole, Judge, 11th District Court of Appeals." In light of these violations, the hearing panel recommended that the respondent pay a fine of \$1,000, pay the costs of the proceedings, and pay \$2,500 of the complainant's reasonable and necessary attorney fees in bringing the grievance and prosecuting the formal complaint.

The hearing panel also recommended that the five-judge commission issue a cease-and-desist order to cause the respondent to (1) include the dates of her service as judge and remove

any reference of herself as "Judge O'Toole" on her website and (2) cease wearing the name badge that identifies her as judge. On October 5, 2012, the five-judge commission issued a cease-and-desist order that incorporated the recommendations of the hearing panel. The five-judge commission also required the respondent to file an affidavit of compliance. The respondent filed her affidavit on October 10, 2012. On October 17, 2012, the complainant filed a motion for the commission to amend its cease-and-desist order. We denied the motion on October 22, 2012, as this commission may only issue a cease-and-desist order based upon the findings of the hearing panel.

This commission convened by telephone conference on October 18, 2012, to review this matter. We were provided with the record certified by the board and a transcript of the September 18, 2012 proceedings before the hearing panel.

Pursuant to Gov.Jud.R. II(5)(D)(1), we are charged with reviewing the record to determine whether it supports the findings of the hearing panel and that there has been no abuse of discretion. We unanimously hold that there was no abuse of discretion by the panel and that the respondent violated Jud.Cond. R. 4.3(A) as alleged in Counts II and III of the complaint.

This commission has recently reviewed cases involving campaign advertisements that misrepresented the judicial candidate's present position and potentially misled the public. In *In re Judicial Campaign Complaint Against Moll*, 132 Ohio St.3d 1505, 2012-Ohio-3952, 973 N.E.2d 273, we found that the candidate's use of a picture of herself in a judicial robe without an accurate notation as to her current position and dates of service as a former magistrate created the impression that she held judicial office. Similarly, in *In re Judicial Campaign Complaint Against Lilly*, 131 Ohio St.3d 1515, 2012-Ohio-1720, 965 N.E.2d 315, the lack of a statement by the candidate that she was a "former judge" to accompany a picture of her in a judicial robe led to finding a violation of Jud.Cond.R. 4.3(D).

In the instant case, we are reviewing the panel's findings that a candidate's Internet website and name badge misrepresent the respondent's present position. We agree with the panel that a reasonable person would be deceived or misled into believing that the respondent is currently a sitting judge. The respondent's testimony, together with her wearing the name badge in question to the hearing in this matter, leave little doubt that she intended the public to believe that she is a judge, when she is not. Unlike in *Moll* and *Lilly*, we believe that the respondent's conduct here is more than simply the omission of key facts in her campaign materials or the ignorance of our prior holdings. Instead, her conduct demonstrates that she is deliberately flouting the very rules that govern judges and candidates alike.

The respondent filed her objections to the hearing panel's report on October 10, 2012. The complainant filed his answer brief on October 15, 2012. The respondent raised three separate objections to the hearing panel's report, including a facial and as-applied challenge to the constitutionality of Jud.Cond.R. 4.3(A) based on the First and Fourteenth Amendments to the United States Constitution. The hearing panel dismissed a similar motion filed by the respondent before the hearing. The respondent relies on a recent decision of the 13-judge commission in *O'Neill v. Crawford*, 132 Ohio St.3d 1472, 2012-Ohio-3223, 970 N.E.2d 973, to support her objection. The *O'Neill* commission dismissed a complaint alleging a Jud.Cond.R. 4.3(C)

violation based on a recent decision of the United States Supreme Court that invalidated the Stolen Valor Act. *United States v. Alvarez*, ___ U.S. ___, 132 S.Ct. 2536, 183 L.Ed.2d 574 (2012). The respondent's objections are not well taken. *O'Neill* is factually distinguishable from the case at hand, and the numerous other cases cited by the respondent do not involve judicial-conduct rules similar to Jud.Cond.R. 4.3(A).

In addition to adopting all the sanctions recommended by the hearing panel, this commission also finds that the respondent should be publicly reprimanded. The disciplinary process for judicial-campaign complaints serves many important purposes: punishing behavior that is contrary to the Code of Judicial Conduct, informing the legal and judicial communities of the appropriate standards governing judicial-campaign conduct, and deterring similar violations by judicial candidates in future elections. See *In re Judicial Campaign Complaint Against Morris*, 81 Ohio Misc.2d 64, 675 N.E.2d 580 (1997); *In re Judicial Campaign Complaint Against Burick*, 95 Ohio Misc.2d 1, 705 N.E.2d 422 (1999); and *In re Judicial Campaign Complaint Against Brigner*, 89 Ohio St.3d 1460, 732 N.E.2d 994 (2000). The record here is replete with testimony offered by the respondent that she believes she may continue to use the title "judge" because she once served in that office, despite the fact that she does not currently hold the office and that such conduct is in direct contravention of Jud.Cond.R. 4.3(A). Canon 4 of the Code of Judicial Conduct does not permit judicial candidates to identify themselves as judge or magistrate if they do not currently hold the public office. Maintaining the integrity of judicial elections requires us to impose a public reprimand in this case.

It is the unanimous conclusion of this five-judge commission that the respondent be publicly reprimanded for her violations of Jud.Cond.R. 4.3(A) of the Code of Judicial Conduct and that she be fined \$1,000. We additionally order the respondent to pay the costs of these proceedings and the complainant's reasonable and necessary attorney fees and expenses in the amount of \$2,500.

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 November 15, 2012. This opinion shall be published by the Supreme Court Reporter in the manner prescribed by Gov.Bar R. V(8)(D)(2).

SO ORDERED.

/s/ Peggy L. Bryant
Judge Peggy L. Bryant, Chair

/s/R. Scott Krichbaum
Judge R. Scott Krichbaum

/s/ David A. Ellwood
Judge David A. Ellwood

/s/ Mark K. Wiest
Judge Mark K. Wiest

/s/ Richard K. Warren
Judge Richard K. Warren

Dated: October 24, 2012.

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

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OCT 24 2012

In re Judicial Campaign Complaint
Against Colleen Mary O'Toole

Case No. 2012-1653

CLERK OF COURT
SUPREME COURT OF OHIO

ORDER

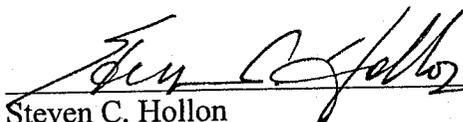
INSTRUCTIONS REGARDING PAYMENT OF FINE, COSTS
AND ATTORNEY FEES

The October 24, 2012 commission order directed the secretary of the commission to provide instructions to the respondent regarding the payment of the fine, costs and attorney fees.

Respondent is hereby instructed to pay a fine of \$1,000.00 and costs of \$2,530.82 to the Supreme Court of Ohio, Attorney Services Fund by cashier's check or money order on or before November 15, 2012. If the fine and costs are not paid in full on or before November 15, 2012, interest at the rate of ten percent per annum shall accrue on the unpaid balance, respondent will be found in contempt, and the matter will be referred to the office of the Attorney General for collection.

Respondent is also instructed to pay attorney fees in the amount of \$2,500 by cashier's check or money order payable to Mary L. Cibella, 614 West Superior Ave., Ste. 1300, Cleveland, Ohio 44113 on or before November 15, 2012, and provide proof of payment to the Clerk of Court.

BY ORDER OF THE COMMISSION.


Steven C. Hollon
Secretary to the Commission

Dated: October 24, 2012.

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

12-1653

In re:

Judicial Campaign Complaint Against

Colleen Mary O'Toole (0053652)

Respondent,

James Davis (0007850)

Complainant.

Case No.: 12-066

**PANEL FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS**

INTRODUCTION

{¶1} This matter came on for hearing in Columbus, Ohio on September 18, 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 Patrick L. Sink, a nonattorney member of the Board of Commissioners, McKenzie Davis, Esq. and Judge Otho Eyster, panel chair, all 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, James Davis, was present and represented by David F. Axelrod and Mary L. Cibella. The Respondent, Colleen Mary O'Toole, was also present and represented by J. Michael Murray.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

{¶12} The complaint in this matter contains three counts. Count I alleges that Respondent is a candidate for the Eleventh District Court of Appeals and that she is not now nor has she been a judge in the State of Ohio since 2011; that the biography or resume distributed by Respondent to the Ashtabula County Republican Party contains a photograph of her in what appears to be a judicial robe (Exhibit 1); that this photograph creates the false impression of being a current judge; and, this photograph was posted, published, circulated, or distributed concerning 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 would be deceiving or misleading to a reasonable person. Count II alleges Respondent's web site otooleforjudge.com (Exhibit 2) contains a statement that she "was elected to the Eleventh District Court of Appeals in 2004" and that "Judge O'Toole testified on the positions of the Ohio Judicial Conference Committee and participated in many legislative conferences advocating the position of the conference be[fore] legislators"; and these statements were posted, published, circulated, or distributed concerning the Respondent, 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. Count III alleges Respondent wore a gold and black name badge which reads "Colleen Mary O'Toole Judge 11th District Court of Appeals (Exhibits 3 & 17); that this statement is misleading to a reasonable person in that it conveys the impression that the Respondent is

currently a judge of the 11th District Court of Appeals; and this statement was posted, published, circulated, or distributed concerning the Respondent, 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.

{¶13} The panel, having considered the testimony, exhibits, arguments and all relevant matters, finds the Complainant did not prove by clear and convincing evidence the alleged violations of Rules 4.3(A) and 4.3(F) of the Ohio Code of Judicial Conduct contained in Count I of the complaint, and recommends Count I be dismissed. The panel further finds the Complainant did prove by clear and convincing evidence a violation of Rule 4.3(A) [statements posted, published, circulated, or distributed concerning the Respondent, 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] as alleged in Counts II & III.

FINDING OF FACT

{¶14} The Respondent is currently a judicial candidate for the Eleventh District Court of Appeals in November 6, 2012 general election. The Respondent served a full term on this Court from 2006 through 2011, and was defeated in the 2010 primary in her bid for re-election. The Respondent has not served as a judge in the State of Ohio since 2011.

ANALYSIS AND CONCLUSIONS

COUNT I

{15} The allegation in this count is that Respondent distributed a biography or resume to the Ashtabula County Republican Party containing a photograph of her in what appears to be a judicial robe (Exhibit 1). The Respondent testified that she never provided a resume or picture to the Ashtabula County Republican Party and had never been on their web site prior to the filing of this grievance. Charles Frye, Chairman of the Ashtabula County Republican Party, testified the photo shown in Exhibit 1 came from the 2010 election, and was posted by the party in January or February of this year. He said the wordage accompanying the photo came from Respondent within the past couple of months. The Respondent later testified that she had, in fact, provided the text contained in Exhibit 1, but not the photograph captioned "Judge Colleen Mary O'Toole". The panel finds the photograph does create the false impression that the Respondent is a current judge, but the Complainant has failed to prove by clear and convincing evidence that Respondent posted, published, circulated or distributed the photograph, and the panel finding no violation of Rule 4.3(A) or 4.3(F) of the Ohio Code of Judicial Conduct recommends Count I be dismissed.

COUNT II

{16} The allegation in this count is that Exhibit 2 (Respondent's campaign web site) contains statements posted by Respondent either knowing

the information to be false or with reckless disregard of whether or not it was false or, if true, that would be deceiving or misleading to a reasonable person. The posting entitled, "About", begins with the statement, "Colleen O'Toole was elected to the Eleventh District Court of Appeals in 2004", followed by the sentence, "During her term, she has decided over 1500 cases and has authored over 500 opinions". The panel finds the failure to state her term ended in 2010 gives the impression she is still on the court. The second sentence is worded in such a manner as to reinforce the impression that she is still a sitting judge. On line 9 of the page, she refers to herself as "Judge O'Toole", again giving the impression that she is currently serving as a judge. It is Respondent's contention the last sentence, the last line on the page, "She is presently CEO of On Demand Interpretation Services, LLC", indicates her term has ended. The panel finds a reasonable person would be deceived or misled into believing Respondent is currently serving on the Eleventh District Court of Appeals. Respondent acknowledges writing the page, and the panel finds her conduct has violated Rule 4.3(A) of the Code of Judicial Conduct.

COUNT III

{17} The allegations in this count are that the badge worn by Respondent which reads, "Colleen Mary O'Toole Judge 11th District Court of Appeals", is misleading to a reasonable person in that it gives the impression the Respondent is currently a judge on that court. The badge is depicted in Exhibit 3 and further identified as Exhibit 17 is the badge Respondent wore to the hearing.

The Respondent did not deny that it was the same badge depicted in Exhibit 3, but testified she always wears it in conjunction with another name tag reading "O'Toole for Judge" with a disclaimer. Respondent testified the badge was made for her by her secretary when she was sitting as a judge, but was not designed to communicate that she was a judge. She says the badge is the description of the position, and not a description of a title and wearing it in conjunction with the other name tag indicates she is now running for judge. The panel finds Respondent's explanation somewhat confusing and not at all persuasive. The panel finds the gold and black name badge depicted in Exhibits 3 & 17 reading, "Colleen Mary O'Toole Judge 11th District Court of Appeals," would deceive or mislead a reasonable person into believing Respondent is currently serving on the court of appeals. The panel finds Respondent's conduct has violated Rule 4.3(A) of the Ohio Code of Judicial Conduct.

{18} Respondent has attended five judicial candidate seminars and professes to desire to comply with the rules. The panel has serious concerns as to how the Respondent views herself. When asked, "Do you contend that it is a true statement to describe yourself as a judge right now," Respondent replied, "Yes, I am a judge, not a sitting judge. I believe I will always hold the title if I choose to." Hearing Tr. 54, l. 10-15. Referring to the web site that is the subject of Count II, Respondent was asked, "Okay. When you put it up, did you believe the First Amendment permitted you to call yourself a judge?" Her response, "I believe it was accurate and not misleading when I put it up; and I

mean if you read the case, yes, I think the First Amendment also supports the position. I'm not waiving any of those First Amendment rights; but more importantly, I don't think it was misleading and I don't think it was inaccurate." *Id.* at 117, l. 10-19. Respondent was asked, "So you believe that's appropriate for you to describe yourself as a judge?". Respondent's reply, "In non-campaign material absolutely. I'm not misleading anyone". *Id.* at 142, l. 24 to 243, l. 3. One panel member asked Respondent, "Now, are you a judge?". The response, "I am a judge, but I am not a sitting judge" *Id.* at 255, l. 19-21. When asked by another panel member, "Where do you get the idea that you're a judge," Respondent answered, "Because I served for six years as a judge and so people commonly call you by that name" *Id.* at 278, l. 3-7. A panel member stated, "But you have testified that you think you're a judge". To which the Respondent answered, "I think I can use the title because of my former service". *Id.* at 283, l. 21-24.

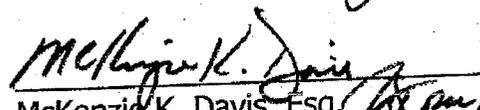
RECOMMENDATION

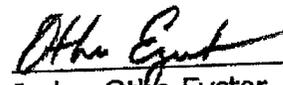
{19} BCGD Advisory Opinion 89-15 states "an advertisement that is unclear as to whether the candidate is currently a judge is, in our opinion, a misrepresentation of the candidate's identity." Respondent acknowledges she wrote the text of the web site addressed in Count II. It has her elected judge but doesn't state her term has ended. It speaks in the present tense and refers to the Respondent as "Judge O'Toole." The badge worn by Respondent (Exhibits 3 & 17) identifies her as "Colleen Mary O'Toole Judge 11th District Court of

Appeals" and gives the distinct impression that Respondent is presently serving as a judge on the appellate court. The panel can only conclude that Respondent's web site and badge are part of an effort to portray herself as an incumbent judge.

{¶10} While the two Jud. Cond. R. 4.3(A) violations found by the panel may not appear egregious standing alone, the Respondent's insistence that she is a judge in view of overwhelming evidence to the contrary is of great concern. The panel recommends the Respondent be ordered to include the date her service as judge ended and to remove any reference to herself as "Judge O'Toole" from the web site addressed in Count II. The panel also recommends that the Respondent be ordered to cease and desist from wearing the name badge (Exhibits 3 & 17) that identifies her as a judge. The panel further recommends that the Respondent be assessed a fine of \$1,000.00 and to pay the costs of these proceedings. The panel further recommends the Respondent pay Complainant \$2,500.00 as and for attorney fees.


Patrick L. Sink *for panel member*


McKenzie K. Davis, Esq. *for panel member*


Judge Otis Eyster, Chair *for panel member*

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

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OCT 05 2012

CLERK OF COURT
SUPREME COURT OF OHIO

In re: Judicial Campaign Complaint
Against Colleen Mary O'Toole

Case No. 2012-1653

ORDER

OCT 05 2012

Pursuant to Rule II, Section 5(D)(1) of the Supreme Court of Ohio Rules for Government of the Judiciary, the five-judge commission appointed to consider the above-cited matter has considered the report of the hearing panel of the Board of Commissioners on Grievances and Discipline filed with the Supreme Court of Ohio on October 1, 2012.

Having considered the report of the hearing panel and the record in this proceeding to date, the five-judge commission hereby issues, pursuant to Rule II, Section 5(D)(2), an interim order that the respondent immediately and permanently cease and desist from using any reference to herself as "Judge O'Toole" on the respondent's website, www.otooleforjudge.com, and shall add the date her service as judge ended. The commission further orders the respondent to cease and desist from wearing the name badge identified as Ex. 3 and Ex. 17 or similar name badge that identifies the respondent as a judge.

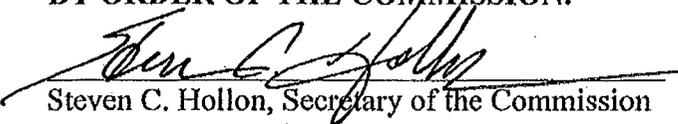
The respondent shall file an affidavit with the clerk of the Supreme Court of Ohio before 5:00 p.m. on Tuesday, October 9, 2012, affirming she has complied with this order.

This interim order is issued based on the recommendation of the hearing panel.

The commission hereby orders that the respondent may file objections to the panel report of the Board of Commissioners on Grievances and Discipline, not to exceed ten pages, with the Supreme Court clerk no later than October 10, 2012, and the complainant may file a reply brief, not to exceed ten pages, no later than October 15, 2012.

Briefs shall be filed in the manner set forth in the Supreme Court's order of October 3, 2012, appointing the five-judge commission, with a copy served on the other party and opposing counsel.

BY ORDER OF THE COMMISSION.


Steven C. Hollon, Secretary of the Commission

Dated: October 5, 2012

IN THE SUPREME COURT OF OHIO

In re: Judicial Campaign Complaint
Against Colleen Mary O'Toole

: Supreme Court Case No. 2012-1653

Respondent

:

:

RESPONDENT'S AFFIDAVIT OF COMPLIANCE

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STATE OF OHIO)

) SS

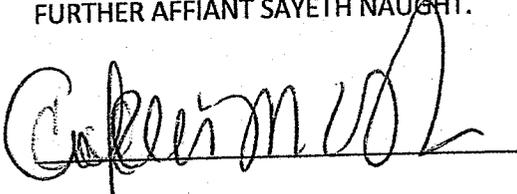
AFFIDAVIT

COUNTY OF LAKE)

NOW COMES COLLEEN MARY O'TOOLE, and having been first duly sworn and cautioned, avers and states as follows:

1. I have personal knowledge of the matter testified to herein.
2. I will not wear the name tag described in the panel recommendations.
3. I have requested that my web designer remove the word "judge" from appearing in front of my name on the website otooleforjudge and he has made the appropriate changes.
4. I have requested that my web designer insert the actual dates of my service as an appellate judge on the website otooleforjudge and he has made the appropriate changes.
5. The "about page" of the otooleforjudge webpage is in compliance with the five judge panel's order.

FURTHER AFFIANT SAYETH NAUGHT.



COLLEEN MARY O'TOOLE

SWORN TO BEFORE ME AND SUBSCRIBED in my presence this 8th day of October, 2012.



BRIAN SCHICK, NOTARY PUBLIC

ATTORNEY AT LAW – STATE OF OHIO

MY COMMISSION DOES NOT EXPIRE

CERTIFICATE OF SERVICE

I certify that a copy of the forgoing was served October 9, 2012, on the following:

Original and Seven Copies via Federal Express:

Kristina D. Frost, Clerk
The Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, OH 43215

Copy via U.S. Mail:

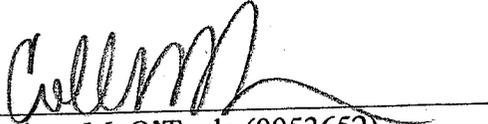
Steven Hollon, Administrative Director
The Supreme Court of Ohio
Secretary, Five-Judge Commission
65 South Front Street, 7th Floor
Columbus, OH 43215

D. Alan Asbury, Administrative Counsel
The Supreme Court of Ohio
65 South Front Street, 7th Floor
Columbus, OH 43215

Mary L. Cibella
614 West Superior Avenue, Suite 1300
Cleveland, OH 44113

David F. Axelrod
Shumaker, Loop & Kendrick LLP
41 South High Street, Suite 2400
Columbus, OH 43215-6104

J. Michael Murray
Raymond V. Vasvari, Jr.
Berkman, Gordon, Murray & DeVan
55 Public Square, Suite 2200
Cleveland, OH 44113


Colleen M. O'Toole (0053652)
Respondent, Pro Se

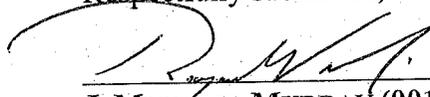
– Certificate of Service –

True and accurate copies of the foregoing *Notice of Appeal* were served today, November 8, 2012, upon each of the following via Federal Express next morning service:

Mary Cibella, Esq.
614 West Superior Avenue,
Rockefeller Building Suite 1300,
Cleveland, Ohio 44114

Steven C. Hollon, Esq.
Secretary to the Commission &
Administrative Director
Allen Asbury,
Administrative Counsel
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215

Respectfully submitted,



J. MICHAEL MURRAY (0019626)

jmmurray@bgmdlaw.com

RAYMOND V. VASVARI, JR. (0055538)

rvasvari@bgmdlaw.com

BERKMAN, GORDON, MURRAY & DEVAN

55 Public Square, Suite 2200

Cleveland, Ohio 44113-1949

Telephone: 216-781-5245

Telecopier: 216-781-8207

Counsel for the Respondent

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

In Re: Judicial Campaign Complaint)	Case No. 2012-1653
Against Colleen Mary O'Toole)	
)	Respondent's Motion to Stay the Sanctions
)	Imposed Against Her Pending Her Appeal
)	to the Supreme Court of Ohio

In a series of Orders entered on October 24, 2012, the Commission: (a) found that the Hearing Panel had not committed an abuse of discretion in finding that the Respondent had violated Ohio R. Jud. Cond. 4.3(A) as alleged in Counts I and II of the Complaint filed against her; (b) found that she had violated that Rule, as alleged in that Complaint; (c) overruled the objections she made to that decision based on the argument that Rule 4.3(A) violates the First Amendment; (d) adopted the sanctions recommended by the Hearing Panel; (e) found that the Respondent should also be publicly reprimanded; (f) ordered that she also be fined \$1,000.00; (g) ordered that she pay the attorney fees of the complainant, in the amount of \$2,500.00, and; (h) ordered that she pay costs in the amount of \$2,530.82. Respondent was ordered to make all the payments in question on or before November 15, 2012.

Respondent is filing, at the same time as this Motion, a Notice appealing the decision and orders entered against her on October 24, 2012 to the Supreme Court of Ohio.

Respondent now respectfully moves the Commission for an Order staying the imposition of sanctions against her, including both the imposition of a public reprimand and the payments, by her, of the fines, fees and costs outlined above, pending the resolution of her appeal to the Supreme Court of Ohio.

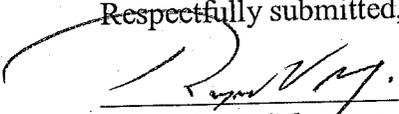
If the Respondent is compelled to pay these substantial fines and costs now, and is reprimanded, but is ultimately vindicated on appeal, she will have suffered a very real, and a

comparatively immediate punishment in the meantime, including the payment of substantial sums.

If, on the other hand, she does not prevail, she will – in due time, and after the full measure of due process afforded her under the Rules for the Government of the Judiciary – pay the price.

Respondent respectfully requests that the public reprimand and the imposition of sanctions against her be stayed until the appeal vouchsafed to her in the Rules for the Government of the Judiciary has been allowed to run its course.

Respectfully submitted,



J. MICHAEL MURRAY (0019626)

jmmurray@bgmdlaw.com

RAYMOND V. VASVARI, JR. (0055538)

rvasvari@bgmdlaw.com

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Telecopier: 216-781-8207

Counsel for the Respondent

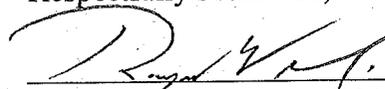
– Certificate of Service –

True and accurate copies of the foregoing *Respondent's Motion to Stay the Sanctions Imposed Against Her Pending Her Appeal to the Supreme Court of Ohio* were served today, November 8, 2012, upon each of the following via Federal Express next morning service:

Mary Cibella, Esq.
614 West Superior Avenue,
Rockefeller Building Suite 1300,
Cleveland, Ohio 44114

Steven C. Hollon, Esq.
Administrative Director
Allen Asbury,
Administrative Counsel
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215

Respectfully submitted,



J. MICHAEL MURRAY (0019626)

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Telephone: 216-781-5245

Telecopier: 216-781-8207

Counsel for the Respondent

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

In Re: Judicial Campaign Complaint)	Case No. 2012-1653
Against Colleen Mary O'Toole)	
)	Respondent's Motion to Stay the Sanctions
)	Imposed Against Her Pending Her Appeal
)	to the Supreme Court of Ohio

In a series of Orders entered on October 24, 2012, the Commission: (a) found that the Hearing Panel had not committed an abuse of discretion in finding that the Respondent had violated Ohio R. Jud. Cond. 4.3(A) as alleged in Counts I and II of the Complaint filed against her; (b) found that she had violated that Rule, as alleged in that Complaint; (c) overruled the objections she made to that decision based on the argument that Rule 4.3(A) violates the First Amendment; (d) adopted the sanctions recommended by the Hearing Panel; (e) found that the Respondent should also be publicly reprimanded; (f) ordered that she also be fined \$1,000.00; (g) ordered that she pay the attorney fees of the complainant, in the amount of \$2,500.00, and; (h) ordered that she pay costs in the amount of \$2,530.82. Respondent was ordered to make all the payments in question on or before November 15, 2012.

Respondent is filing, at the same time as this Motion, a Notice appealing the decision and orders entered against her on October 24, 2012 to the Supreme Court of Ohio.

Respondent now respectfully moves the Commission for an Order staying the imposition of sanctions against her, including both the imposition of a public reprimand and the payments, by her, of the fines, fees and costs outlined above, pending the resolution of her appeal to the Supreme Court of Ohio.

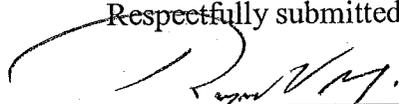
If the Respondent is compelled to pay these substantial fines and costs now, and is reprimanded, but is ultimately vindicated on appeal, she will have suffered a very real, and a

comparatively immediate punishment in the meantime, including the payment of substantial sums.

If, on the other hand, she does not prevail, she will – in due time, and after the full measure of due process afforded her under the Rules for the Government of the Judiciary – pay the price.

Respondent respectfully requests that the public reprimand and the imposition of sanctions against her be stayed until the appeal vouchsafed to her in the Rules for the Government of the Judiciary has been allowed to run its course.

Respectfully submitted,



J. MICHAEL MURRAY (0019626)

jmmurray@bgmdlaw.com

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Cleveland, Ohio 44113-1949

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Telecopier: 216-781-8207

Counsel for the Respondent

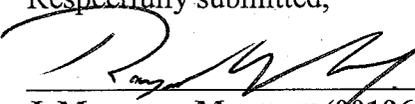
– Certificate of Service –

True and accurate copies of the foregoing **Respondent's Motion to Stay the Sanctions Imposed Against Her Pending Her Appeal to This Court, Which Include Monetary Sanctions to Be Paid On or Before November 15, 2012**, were served today, November 12, 2012, upon each of the following via Federal Express next morning service:

Mary Cibella, Esq.
614 West Superior Avenue,
Rockefeller Building Suite 1300,
Cleveland, Ohio 44114

Steven C. Hollon, Esq.
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Administrative Director
Allen Asbury, Esq.
Administrative Counsel
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215

Respectfully submitted,



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Counsel for the Respondent