

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Case No. 2015-078

Complaint against

**Ronnie Michael Tamburrino
Attorney Reg. No. 0021594**

Respondent

Disciplinary Counsel

Relator

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

OVERVIEW

{¶1} This matter was heard on May 2, 2016 in Canton before a panel consisting of McKenzie K. Davis, Judge John W. Wise, and David L. Dingwell, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing, represented by Donald C. Brey. Joseph M. Caligiuri appeared on behalf of Relator.

{¶3} Fifteen exhibits were admitted into evidence by Relator at the hearing. Twenty-five exhibits were admitted into evidence by Respondent at the hearing. Respondent, Judge Timothy P. Cannon (of the Eleventh District Court of Appeals), and Charles H. Bean testified at the hearing. Based on the evidence presented and consideration of the applicable case precedents, the panel finds Respondent engaged in misconduct and recommends imposition of a six-month suspension stayed in its entirety.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} The panel finds the following facts to have been proven by clear and convincing evidence.

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 1, 1983. In 2014, Respondent was a candidate in a contested election for a seat on the Eleventh District Court of Appeals. His opponent was Judge Timothy Cannon. As a candidate in a judicial election, Respondent was subject to the Rules of Professional Conduct, the Code of Judicial Conduct, and the Rules for the Government of the Bar of Ohio. Respondent has no prior discipline.

{¶6} The issues giving rise to Relator's complaint involve two separate television ads that Respondent approved and were aired on local television in the very final weeks of the 2014 judicial campaign between Respondent and Judge Cannon.

Count One—Teenage Drinking Ad

{¶7} The first ad charged by Relator (Relator's Ex. 3; Respondent's Ex. R) depicts a scene where a judge is serving what appears to be alcohol to children in a courtroom. The entire narration during the ad states as follows:

Everyone knows that a judge would never serve alcohol to kids in a courtroom. But appellate judge Tim Cannon did something almost as bad. In the case State versus Andrews, Cannon ruled that cops couldn't enter a house to arrest a parent who was hosting a teenage drinking party, because he felt teenage drinking wasn't a serious crime. Cannon doesn't think teenage drinking is serious. What else does he think isn't serious? We can't afford Tim Cannon's bad judgment. Elect Ron Tamburrino to the Eleventh District Court of Appeals.

{¶8} During parts of the narration, writing appears on the screen. The following written content corresponded with the narration as follows:

Narration: "In the case State versus Andrews, Cannon ruled that cops couldn't enter a house to arrest a parent..."

Visual words on screen: “Judge Cannon ruled cops couldn’t arrest a parent who hosted a teenage drinking party.”

Narration: “...who was hosting a teenage drinking party, because he felt teenage drinking wasn’t a serious crime.”

Visual words on screen: “Cannon: ‘There were no exigent circumstances to justify the intrusion’ *State v Andrews* 177 Ohio App.3d 593 (2008)”

Narration: “Cannon doesn’t think teenage drinking is serious.”

Visual words on screen: “Judge Tim Cannon doesn’t think teenage drinking is a serious offense.”

Narration: “What else does he think isn’t serious?”

Narration: “We can’t afford Tim Cannon’s bad judgment.”

Visual words on screen: “BAD JUDGMENT”

Relator’s Ex. 3; Respondent’s Ex. R.

{¶9} A written transcript of the ad also was introduced as Relator’s Ex. 2 and Respondent’s Ex. A.

{¶10} Respondent testified that this ad first aired on October 28 or 29, 2014. Hearing Tr. 68.

{¶11} Respondent confirmed that the only source material he relied upon to base the content of this ad was Cannon’s concurring opinion in the case of *State v. Andrews*, 177 Ohio App.3d 593, 2008-Ohio-3993. Hearing Tr. 266.

{¶12} The *Andrews* case (Respondent’s Ex. B) decided an appeal of a denial of a motion to suppress evidence obtained as a result of a warrantless search of a home conducted by police that was allegedly the site of a teenage drinking party. Andrews, the adult homeowner, was charged with contributing to the delinquency of a minor.

{¶13} The majority opinion, authored by Judge Mary Jane Trapp, was joined by Cannon. Judge Diane Grendell authored a dissenting opinion.

{¶14} Nowhere in the majority opinion does there include any language that police could not enter a home or arrest a parent who hosts a teenage drinking party.

{¶15} Cannon authored a separate concurring opinion. Nowhere in Cannon's concurring opinion does there include any language that police could not enter a home or arrest a parent who hosts a teenage drinking party.

{¶16} Both the majority opinion and Cannon's concurring opinion ruled that in order to conduct a search of the home, the police should have first obtained a warrant as required by the Fourth Amendment of the United States Constitution.

{¶17} Cannon included in his concurring opinion the following statements relative to underage drinking:

- "While I recognize the great concern for the problems associated with contributing to inappropriate underage drinking..." *State v. Andrews*, 177 Ohio App.3d 593, 2008-Ohio-3993 at ¶42.
- "While I emphasize that I do not wish to impede an officer's duties to enforce the laws against underage drinking..." *Id.* at ¶43.

{¶18} Nowhere in either the majority opinion or in Cannon's concurring opinion is there any reference that teenage/underage drinking is not a serious crime.

{¶19} Cannon's testimony at the hearing confirmed that the statement "Cannon doesn't think teenage drinking is serious" is false. Hearing Tr. 119-120.

{¶20} Respondent seems to base the statements in his ad on ¶44 of Cannon's concurring opinion that states as follows:

The majority opinion also indicates that there is no need to address the fact that the instant offense is a misdemeanor versus a felony, because there were no "exigent circumstances" to justify the intrusion. I, however, believe the fact that the instant

offense is a misdemeanor charge is of particular importance, because it is a factor to consider in making the assessment of whether exigent circumstances exist. I would want nothing in this decision to deter an officer from exercising his duty if he clearly observes a serious misdemeanor offense or an offense of violence, or if he has other good cause to make an intrusion.

Respondent's Ex B.

{¶21} Based upon the testimony and a review of Cannon's concurring opinion, it is clear that the ad contains several patently false statements of fact that Respondent either knew were false or was reckless in his disregard of whether the statements were false. These patently false statements include all of the following:

Narration: "but appellate judge Tim Cannon did something almost as bad" [as serving alcohol to kids in a courtroom.]

Narration: "In the case State versus Andrews, Cannon ruled that cops couldn't enter a house to arrest a parent..."

Visual words on screen: "Judge Cannon ruled cops couldn't arrest a parent who hosted a teenage drinking party."

Narration: "...who was hosting a teenage drinking party, because he felt teenage drinking wasn't a serious crime."

Narration: "Cannon doesn't think teenage drinking is serious."

Visual words on screen: "Judge Tim Cannon doesn't think teenage drinking is a serious offense."

Relator's Ex. 2 and 3; Respondent's Ex. A and R.

Count Two—"Won't Disclose" Ad

{¶22} The second television ad (Relator's Ex. 7 and 8; Respondent's Ex. C) that is the subject of Relator's complaint includes one section where the narrator states "Cannon won't disclose his Taxpayer Funded Travel Expenses" while the same phrase appears in writing adjacent to a photograph of Cannon. Respondent testified that this ad first aired in mid-October 2014. Hearing Tr. 40.

{¶23} At the hearing, Respondent admitted as follows, “But I admit that I never requested that he make disclosure of taxpayer-funded travel expenses using those words.” Hearing Tr. 43.

{¶24} Not only had Respondent never requested that Cannon disclose travel expenses, Cannon confirmed that no one else did either during the entire campaign. Hearing Tr. 104-105.

{¶25} According to Respondent, one of the issues he focused upon during his 2014 judicial campaign against Cannon was transparency of the budget for the Eleventh District Court of Appeals. Respondent introduced several clips of various events at which he appeared and gave presentations. Respondent’s Ex. N.

{¶26} In each of these clips, Respondent comments that the court of appeals should revise its website in order to post the court of appeals’ budget, including the salaries of the judges and the other expenses that the court of appeals is paying.

{¶27} Respondent introduced into evidence Cannon’s travel expense reports. Respondent’s Ex. H, I, J, K, and L. All of these travel expenses were paid from the budget of the Supreme Court of Ohio, and not the Eleventh District Court of Appeals. Therefore, none of Respondent’s campaign event presentations discussing court of appeals budget and expense disclosures would be related in any way to Cannon’s travel expense reports made to the Supreme Court of Ohio.

{¶28} While Respondent claims that the proper context of the ad’s statement regarding “won’t disclose” should be interpreted as an opinion or a prediction of a future event, the statement in the ad follows two statements of past events:

- “60% of Cannon’s opinions that the Ohio Supreme Court reviews are reversed”
- “Cannon has heard cases less than 35 days each of the last two years”
- “Cannon won’t disclose his taxpayer funded travel expenses”

Respondent’s Ex. C.

{¶29} The panel finds, by clear and convincing evidence, that the statement is not just misleading, but that it constitutes a false statement of fact that Cannon violated Ohio's public records laws by not producing public records upon request.

{¶30} Additionally, the ad is also a patently false statement of fact because in order for Cannon to have received any taxpayer funded travel expense reimbursements, he did in fact disclose those expenses. He disclosed them to the Supreme Court. The Supreme Court's file stamp on the travel expense sheets therefore confirms that Cannon did in fact disclose his travel expenses. Respondent's Ex. H, I, J, K, and L.

{¶31} The undisputed facts are that, with the exception of the Supreme Court, no person, including Respondent, ever requested Cannon to disclose or produce his travel expenses prior to the 2014 election.

{¶32} The panel concludes by clear and convincing evidence, based upon the exhibits and the testimony presented at the hearing, that Respondent's conduct violated the following Rules:

- Jud. Cond. R. 4.2(A)(1) [a judicial candidate shall be responsible for acting at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary]; and
- Jud. Cond. R. 4.3(A) [during the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including advertisements on radio or television or electronic communication, shall not knowingly or with reckless disregard post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent, either knowing the information to be false or with reckless disregard of whether or not it was false].

Procedural Issues

{¶33} Initially, Respondent urges the panel to dismiss the complaint on the basis that Relator's alleged delay in the investigation prejudiced Respondent. The panel declines to dismiss the complaint on this basis.

{¶34} Pursuant to Gov. Bar R. V, Section 9(D)(3), the time limits set forth in Section 9 are "not jurisdictional." Respondent suggests that the investigation lasted over one year. There was insufficient evidence presented at the hearing to demonstrate that the complaint was submitted to the Board of Professional Conduct more than a year after investigation began. Accordingly, the panel declines to dismiss the complaint on that basis.

{¶35} More importantly, there is absolutely no evidence to support the conclusion that Respondent was in any way prejudiced by any delay.

{¶36} The content of the two ads giving rise to Relator's complaint were available for the panel's review. The parties agreed as to the content of those two ads. Respondent admitted that he was aware of the content and approved the content of both ads before they were aired. Evidence of candidate interviews and appearances were also submitted as evidence to the panel. Respondent's suggestion that there were perhaps more video clips available from other appearances is not supported by any evidence at all.

{¶37} Respondent was also aware immediately after he ran the ads that Judge Cannon was filing complaints with multiple sources, including Disciplinary Counsel, with regard to the content of the ads. Respondent was therefore immediately on notice that he should obtain materials in his defense should he have felt the need to do so.

{¶38} In summary, the panel finds that there are no grounds upon which to dismiss Relator's complaint in this matter due to the passage of time.

{¶39} Respondent also urges that the complaint charges be dismissed based upon constitutional grounds, citing the recent decision of *Susan B. Anthony List v. Driehaus* (6th Cir., Feb. 24, 2016), No. 14-4008. The panel is without authority to determine that the Code of Judicial Conduct violates the United States Constitution or the Ohio Constitution.

{¶40} The panel's authority consists of making findings of fact and a determination of a sanction by clear and convincing evidence. See, Gov. Bar R. V, Section 2(A), 12(G)-(I). Accordingly, the panel makes no determination regarding Respondent's constitutional challenge to Jud. Cond. R. 4.2(A)(1) or Jud. Cond. R. 4.3(A).

{¶41} The Supreme Court's most recent pronouncement with regard to the interaction of Jud. Cond. R. 4.3(A) and judicial campaign ads is set forth in *In re Judicial Campaign Complaint Against O'Toole*, 141 Ohio St.3d 355, 2014-Ohio-4046.

{¶42} In accordance with *O'Toole*, Relator's complaint charges that both ads violate Jud. Cond. R. 4.3(A) because both television ads broadcast information concerning the opposing judicial candidate either knowing the information was false or with a reckless disregard of whether the information was false.

{¶43} Relator's complaint also charges that both ads violate Jud. Cond. R. 4.2(A)(1) because Respondent failed to act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.

{¶44} In *O'Toole*, the Supreme Court addressed the issue of whether a candidate, who was previously a judge, violated Rule 4.3(A) by using a name badge identifying her as "Colleen Mary O'Toole, Judge, 11th District Court of Appeals," as well as referring to herself as "Judge O'Toole" on a campaign website. The Court determined that these statements were false and constituted a violation of Jud. Cond. R. 4.3(A).

{¶45} Respondent asserts in the present case that his campaign ads should be taken in the context in which he meant them, and that they are not false, but merely protected opinions or true statements of fact. Candidate O’Toole likely argued the same point to the Supreme Court of Ohio by saying that she was “Judge O’Toole” at one time, and therefore the context of her campaign speech was not false.

{¶46} As set forth above, both the “Teenage Drinking” ad and the “Won’t Disclose” ad contain false statements of fact that Respondent knew were false or he made them with a reckless disregard of whether or not the statements were false.

{¶47} In the “Teenage Drinking” ad, it is stated that Cannon doesn’t think teenage drinking is serious, that Cannon ruled that police cannot arrest a parent that hosts a teenage drinking party, and that Cannon committed an act “almost as bad” as a first degree misdemeanor crime.

{¶48} To suggest that the statements are true in some type of context, or is Respondent’s opinion, ignores the reality that nearly all of the “Teenage Drinking” ad’s statements are completely and verifiably false.

{¶49} With regard to the “Won’t Disclose” ad, the complaint charges one isolated section of the ad. However, the statement is false because Cannon did disclose his travel expenses to the Supreme Court of Ohio. Thereafter, the records were available to anyone else, including Respondent, should they have wanted to obtain them. No one, apart from the Supreme Court, requested the travel expenses.

{¶50} The panel concludes that both ads contain false statements that Respondent knew were false or that he made the false statements with reckless disregard of whether or not they were false. The panel therefore concludes that Respondent violated Jud. Cond. R. 4.3(A).

{¶51} The panel considered prior cases where a judicial candidate's false campaign ad statements also constituted a violation of Jud. Cond. R. 4.2(A)(1). These cases include the Rule's predecessor judicial Canon 7(B)(1). See, *In re Judicial Campaign Complaint Against Hildebrandt* (1997), 82 Ohio Misc.2d 1; *Disciplinary Counsel v. Evans*, 89 Ohio St.3d 497, 2000-Ohio-227.

{¶52} Respondent's use of false statements in both of the ads to unfairly denigrate Judge Cannon is inconsistent with the independence, integrity, and impartiality of the judiciary. The panel concludes that Respondent violated Jud. Cond. R. 4.2(A)(1).

MITIGATION, AGGRAVATION, AND SANCTION

{¶53} The panel finds the following aggravating factors:

- Respondent engaged in multiple offenses in that there were at least two different ads that aired on multiple occasions;
- Respondent timed the two different ads on television to air at the very end of the judicial campaign (mid and late October) to strategically prevent Judge Cannon from having the opportunity to air television ads that countered the effect of the late ads; and
- Respondent did not express any remorse or regret at the hearing, and believed that the ads were truthful and appropriate content to air during the judicial campaign:

Well, I regret that -- I regret that Judge Wise thinks it's an offensive ad. I regret that Judge Cannon thinks it's an offensive ad. But I believe it's a true ad, and I don't think anyone could reasonably be expected to have regret or remorse regarding an issue that their convictions tell them is true.

Hearing Tr. 268.

{¶54} The panel finds the following mitigating factors:

- Respondent has no prior disciplinary record; and
- Respondent was cooperative during the proceedings.

{¶55} Relator recommends a sanction of a public reprimand. Respondent submits that the complaint be dismissed in its entirety.

{¶56} The Supreme Court has held that in dealing with issues of judicial campaigns, “[t]he sanction should be sufficient to punish the violator and serve as a deterrent to similar violations by judicial candidates in future elections.” *In re Brigner* (2000), 89 Ohio St.3d 1460.

{¶57} The Supreme Court has also held that “the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *O’Toole*, *supra*, at ¶63.

{¶58} The panel has reviewed several cases involving judicial campaigns and violations of both Jud. Cond. R. 4.3(A) and Jud. Cond. R. 4.2(A)(1).

{¶59} In *O’Toole*, the Supreme Court held that a public reprimand was appropriate where the judicial candidate was falsely representing that she was a “judge.” *Id.* at ¶70.

{¶60} The panel believes that Respondent’s conduct is more egregious than the conduct of O’Toole for the reason that Respondent’s ads unfairly and untruthfully denigrate his campaign opponent as opposed to merely misrepresenting his own capacity or qualifications for the judicial seat he was seeking.

{¶61} In other judicial campaign cases involving false statements about the opponent, a suspension of six months, with all six months stayed on conditions, has been adopted. See, *e.g.* *Hildebrandt, supra; Evans, supra; In re Judicial Campaign Complaint Against Beery*, 2009-Ohio-113.

{¶62} Respondent’s conduct, and his failure to appreciate and understand why it violates the rules, demonstrates further that a public reprimand simply is not sufficient in this matter. The fact that Respondent is again participating in a contested judicial campaign for the same court, and believes that the ads he ran that are at issue in this proceeding were acceptable, leads this panel to the conclusion that this behavior can and will occur again.

{¶63} The panel, having considered the case law, the rule violations, the aggravating factors, and the mitigating factors, and circumstances present here, recommends that Respondent be suspended from the practice of law for a period of six months, but that the suspension be stayed on the conditions that Respondent commit no further misconduct and attend a six hour continuing education course associated with judicial campaigns, and that Respondent be ordered to pay the costs of these proceedings.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on June 3, 2016 and adopted the findings of fact and conclusions of law of the panel. After discussion, the Board concluded that a more stringent sanction is necessary based on Respondent's repeated refusal to acknowledge the blatantly false content of his advertisements and his corresponding belief that the content of the false advertisements was appropriate. The Board further expressed concern as to the chilling effect that false campaign advertisements such as these could have on judicial independence, as that term is defined in the Terminology section of the Code of Judicial Conduct, and the ability of a judge to freely express his or her views in court opinions. In addition to the *Brigner* case cited by the panel at ¶56, supra, the Board is mindful that "[t]he purpose of sanctions [in a judicial campaign misconduct case] is to inform other judicial candidates of the seriousness of such violations and deter future similar misconduct. A sanction that may result in effective deterrence best serves the public interest and the profession." *In re Per Due* (2003), 98 Ohio St.3d 1548, 1550.

For these reasons, the Board recommends that Respondent, Ronnie Michael Tamburrino, be suspended from the practice of law in Ohio for one year with the final six months stayed on the conditions set forth in ¶63 of this report. The Board further recommends that Respondent be ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director