

Board of Professional Conduct
Advisory Opinions Relative to Judicial Campaign Conduct and Fundraising

- | | |
|---|--|
| <u>Op. No. 87-02</u> (May 7, 1987) | Use of the term “reelect” in judicial campaign |
| <u>Op. No. 88-7</u> (April 25, 1988) | Judges should not engage in the business of consulting for political candidates |
| <u>Op. No. 89-15</u> (June 16, 1989) | Use of the title “judge;” joint advertising and endorsements; independent fundraising activities |
| <u>Op. No. 92-11</u> (April 10, 1992) | Judges and judicial candidates may sign nominating petitions for judicial and nonjudicial candidates |
| <u>Op. No. 97-6</u> (October 10, 1997) | Creation of campaign committee by incumbent judge; expenditure of carryover funds outside the fundraising period |
| <u>Op. No. 98-7</u> (June 5, 1998) | Termination by judicial candidate of a nonjudicial campaign committee and disbursement of nonjudicial campaign funds |
| <u>Op. No. 98-8</u> (June 5, 1998) | Service on political party executive committee or county board of elections |
| <u>Op. No. 98-11</u> (October 9, 1998) | Acceptance of campaign contributions from an elected clerk of court and employees of the clerk |
| <u>Op. No. 01-01</u> (February 2, 2001) | Campaign conduct by a judge whose spouse is a candidate for public office. |
| <u>Op. No. 02-03</u> (April 5, 2002) | Scope of a judge's permissible communication on proposed constitutional amendment regarding drug treatment. |
| <u>Op. No. 02-08</u> (August 9, 2002) | Guidelines on scope of permissible judicial campaign speech. |

[Op. No. 03-8](#) (December 5, 2003)

Use of title and appearance in a robe by magistrates running for judicial office; use of campaign funds by judges, judicial candidates, and magistrates pursuant to former Canon 7(C)(7).

[Op. No. 09-11](#) (December 4, 2009)

Charitable contributions from personal or judicial campaign funds.

[Op. No. 2010-7](#) (December 3, 2010)

Judicial use of and participation in social networking sites.

[Op. No. 2014-1](#) (January 31, 2014)

Standard for disqualification when counsel is a participant in a judge's current campaign.

[Op. No. 2017-8](#) (December 8, 2017)

Judicial participation in parades.

[Op. No. 2018-4](#) (August 3, 2018)

Political and campaign activities of magistrates.

[Op. No. 2021-6](#) (August 6, 2021)

Disqualification when receiving fees or other payments from former law firm

[Ethics Guide: Transition from the Practice of Law to the Bench](#)

CASE SUMMARIES
(July 1995 through December 2021)¹

- *In re Judicial Campaign Complaint against Carr* (1995), 74 Ohio Misc.2d 81; *aff'd* (1996), 76 Ohio St.3d 320.

In a letter, respondent claimed that her opponent had never handled a single case in housing court as an attorney. In a separate letter from her campaign committee to potential donors, respondent included hand-written notes such as “We need your help now! (signed) Cathleen”

Respondent was found to have knowingly misrepresented her opponent’s qualifications in violation of Canon 7(B)(2)(f) and to have personally solicited contributions in violation of Canon 7(C)(2)(a). In addition to a cease and desist order and costs, the Board hearing panel recommended a fine of \$500 for each violation.

The five-judge commission appointed to review the panel’s report unanimously affirmed the panel’s finding of a personal solicitation and affirmed, by a vote of 3-2, the finding of a knowing misrepresentation of an opponent’s qualifications. The commission also found that the panel’s denial of a continuance requested by the respondent was not an abuse of discretion and did not deny the respondent her right to due process.

On appeal, the Supreme Court affirmed the commission’s order by a vote of 6-1, holding that the panel’s denial of the requested continuance and adherence to the expedited time frames in Gov. Jud. R. II, Section 5 was not error. Specifically, the Court noted that the issues presented were simple and straightforward and required little preparation. The Court also noted the respondent’s lack of cooperation, failure to present evidence to refute the charges against her, and failure to appear at the hearing before the Board panel.

The Court also established a balancing test to be used to determine the expediency with which future cases are to be processed. In balancing the parties’ right to a hearing with the parties’ due process rights, the Board is instructed to consider: (1) the immediacy of the alleged violation; (2) the complexity of the complaint; (3) when the respondent received notice of the hearing; (4) whether a weekend intervenes to shorten the five-day hearing time contained in Gov. Jud. R. II, Section 5; and (5) the parties’ difficulty in obtaining documentation and witnesses to prove the case.

¹ Omitted from this case summary are cases dismissed after a formal complaint is filed.

- *In re Judicial Campaign Complaint against Emrich* (1996), 78 Ohio Misc.2d 32; appeal dismissed as untimely filed (1996), 76 Ohio St.3d 1431.

Respondent was a county court judge running for the probate division of the court of common pleas. In billboards and yard signs, respondent used terms such as “Elect Judge Emrich to Probate Court.” He was charged with using the title of “judge” in a way to imply that he currently was serving as the probate division judge, in violation of Canons 7(B)(2)(f), (D)(1), and (E)(1), and with failing to timely file a judicial qualifications statement, as required by Canon 7(B)(6).

Relying on Board of Commissioners Advisory Opinion 89-15, the commission concluded that the respondent had violated Canon 7 by using the title “judge” without specifying the court on which the judge currently serves. The commission cited to the respondent’s testimony, which indicated that he was aware of Advisory Opinion 89-15 and had reviewed and approved of all advertisements that were subject of the complaint. The commission adopted the Board hearing panel’s recommendation of a cease and desist order and fines of \$250 for the advertising violation and \$100 for failing to timely file the statement of judicial qualifications.

- *In re Judicial Campaign Complaint against Keys and Tailer* (1996), 80 Ohio Misc.2d 1.

Two judicial candidates agreed to have their names placed on an invitation to a fundraiser for another candidate for public office. The respondents’ names were included as members of the host committee for that event under the heading of “Please join the Hamilton County legal community in supporting Eve Bolton’s reelection for Recorder.” Upon learning that the inclusion of their names on the invitation was in violation of Canon 7, respondents ceased their association with the Bolton campaign, and respondent Tailer attempted to have her name removed from the invitation.

Respondents were charged with violating Canon 7(B)(2)(b) by having publicly endorsed another candidate for public office. The Board hearing panel recommended issuance of a cease and desist order, but did not recommend imposition of other sanctions since the respondents had desisted from the conduct in question. Neither complainant nor respondents contested the Board’s recommendation, and the commission adopted the hearing panel’s report.

➤ *In re Judicial Campaign Complaint against Roberts* (1996), 82 Ohio Misc.2d 59.

Respondent was county court judge running for the court of appeals. He distributed a circular badge that consisted of the phrase "For Court of Appeals/Judge Roberts," with no indication that respondent currently served on the county court. The phrase "For Court of Appeals" appeared above the phrase "Judge Roberts," and the two phrases were separated by a horizontal line and three stars. Respondent also disseminated campaign literature that stated "*** the legal community says only County Court Judge Bob Roberts is qualified * * *." The record showed that respondent was endorsed by only one county bar association within the seven-county appellate district. Respondent also was charged with distributing campaign literature that stated his opponent had "never even had a private law practice." Respondent was charged with violating Canons 7(B)(2)(f) and (D)(1) with regard to the badge and Canon 7(D)(8) with regard to the use of the phrase "legal community." The third count of the complaint regarding the respondent's alleged misstatement of his opponent's qualifications was dismissed at the hearing before the Board panel.

The hearing panel found a violation on the first count, holding that the badge would lead the average person to believe that respondent was a judge on the court of appeals, especially since respondent did not include the court on which he served. As to count two, the hearing panel found that use of the term "legal community" without providing a clear explanation of what constitutes the "legal community" was misleading and false. The hearing panel recommended that respondent be fined \$250.

The commission concluded that the record did not support a finding by clear and convincing evidence that the badge was misleading. The commission stated that "while the lapel sticker is potentially misleading, we cannot say that the respondent acted knowingly or recklessly in circulating the lapel sticker." Judge Lazarus dissented from this conclusion, stating that she would have found a knowing violation of Canon 7(D)(1) based on respondent's admitted understanding of the interpretation given this provision by the commission in *Emrich, supra*.

The commission upheld the hearing panel's finding regarding use of the term "legal community" and imposed a fine of \$250 plus costs of the proceeding.

➤ *In re Complaint against Judge Harper* (1996), 77 Ohio St.3d 211.

During her campaign for the Supreme Court, respondent approved the broadcasting of a television commercial that implied her opponent, a sitting Supreme Court justice, had made rulings favoring campaign contributors. The Board of

Commissioners and a panel of appellate judges, sitting in place of the Supreme Court, concluded that the respondent, in approving the campaign advertisement, failed to maintain the dignity appropriate to her judicial office and undermined public confidence in the integrity and impartiality of the judiciary, in violation of Canons 2(A) and 7(B)(1)(a). Respondent received a public reprimand for the violations.

➤ *In re Judicial Campaign Complaint against Hildebrandt* (1997), 82 Ohio Misc.2d 1.

Respondent was a court of appeals judge running for reelection. In television and radio advertisements, respondent included statements that “according to the district attorneys, [respondent’s opponent] voted to end the death penalty” and “[respondent’s opponent] ran for judge then dropped out, then ran for Congress and lost.” The former statement was based on a 1994 letter to the President and Attorney General from the National District Attorneys Association terming a vote for certain legislation was a “subrosa attempt to end imposition of the death penalty.”

Respondent was charged with violating Canons 7(B)(1), (B)(2)(f), and (E)(1). With respect to the death penalty statement, the hearing panel found that the advertisement was false and misleading in that the complainant never voted to end the death penalty and failed to inform the public of the facts underlying the statement. As to the latter statement, respondent failed to inform the public that complainant actually had won election to Congress before losing a subsequent race for reelection. The panel noted that complainant had informed respondent of the inaccurate nature of the advertisements and that respondent continued to run the advertisements. The panel recommended a cease and desist order and a fine of \$750.

The commission concurred in and adopted the hearing panel’s statements regarding the severity of the respondent’s misconduct. In addition, the commission noted that the advertisements in question were timed to appear just prior to the election so as to provide the complainant little time to respond to the misstatements or seek redress prior to the election through the expedited grievance process. The commission also expressed distress with the respondent’s failure to verify personally the content of his advertisements, especially after he was informed by the complainant of the incorrect statements.

The commission concluded that the \$750 sanction recommended by the hearing panel was inadequate given the gravity of the respondent’s violations and the need to deter similar misconduct by judicial candidates in the future. The commission suspended the respondent from judicial office, without pay, for a period of six months, beginning on February 9, 1997. The term of the suspension was stayed, and the respondent was placed

on probation, subject to the following terms: issuance of a public apology to the complainant and the citizens of Hamilton County; payment of a \$15,000 fine and costs of the proceedings; and payment of the complainant's reasonable and necessary attorney fees and expenses totaling \$7,963.50. Payment of attorney fees was found appropriate given the public interest served by the complainant's prosecution of the grievance.

Judge Hildebrandt appealed the commission's sanction to the Supreme Court, but dismissed his appeal on May 21, 1997. On June 3, 1997, the commission issued a revised order relative to its sanctions that made the sanctions effective June 17, 1997. In addition, the commission rejected the respondent's proposed apology that had been submitted in February and issued a revised statement of apology. The respondent was required to issue this revised statement.

➤ *In re Judicial Campaign Complaint against Morris* (1997), 81 Ohio Misc.2d 64.

Respondent was a candidate for the domestic relations division of the court of common pleas. The complainant's spouse was a county court judge and the respondent's opponent. In a domestic relations hearing in which respondent and the complainant's spouse were opposing counsel, the complainant's spouse referred to the son of the parties as a "loser." The son was nineteen at the time of the hearing and was not present at the hearing.

Respondent ran a television advertisement that pictured a twelve year-old boy sitting in a courtroom. The advertisement contained a reference to respondent's opponent as referring to a "child" as a "loser." The advertisement suggested that because of this remark, the respondent's opponent was not suited to become a domestic relations judge. The panel report found that respondent violated Canon 7(E)(1) by portraying the opponent's remark out of context both visually and audibly and with the intent of leading the public to believe that the remark was made regarding a young boy and in the opponent's judicial capacity. The panel recommended a fine of \$500.

The commission affirmed the findings of fact and conclusions of law issued by the hearing panel. However, in view of the dual purpose served by the judicial election rules of punishing misconduct and "informing the legal and judicial communities of appropriate campaign conduct," the commission rejected the sanction recommended by the panel. The commission found that to sanction the conduct at issue by means of a \$500 fine was:

* * * to create a campaign environment in which judicial candidates may determine to engage in known violations of the judicial code, including in

their campaign budgets a calculation of fines to be paid as a 'cost of doing business.' Such an environment would in no way enhance the public respect for the judiciary or increase the ability of the citizenry to make more informed choices among candidates for judicial office.

The commission publicly reprimanded the respondent and ordered her to pay the costs of the proceeding.

➤ *In re Judicial Campaign Complaint against Burick* (1999), 95 Ohio Misc.2d 1.

Respondent made several statements that were found to be contrary to Canon 7:

- The respondent's statement that her opponent was appointed by the county political party, when in fact the opponent was appointed by the Governor pursuant to the Ohio Constitution, was considered false and misleading in violation of Canon 7(B)(2)(f) and (E)(1). The judicial commission noted that while comments regarding a judge's appointment by the Governor were permissible, those statements must be accurate and enhance the public's understanding of the appointment process.
- The respondent's statements regarding her use of the death penalty if elected implied that she would impose the death penalty without regard of the facts of the case and application of statutory standards used to determine the appropriateness of the death penalty. These statements were found to be contrary to Canon 7(B)(2)(c) and (d).
- The respondent's statements regarding the leniency of the incumbent judge's sentencing in a rape case were false and misleading in that the defendant plead guilty to a single count of sexual battery for which the maximum allowable sentence was imposed. Moreover, under definitions contained in prior Supreme Court cases, the statement was considered to have been made regarding a pending case, even though the judge had sentenced the defendant and the case had not yet been appealed to the court of appeals. These statements were found to have violated Canon 7(B)(2)(e) and (f), (E)(1), and (F).
- The respondent's advertisement stating that she was "proud to have received the Union endorsements" and that she had been "endorsed by the Fraternal Order of Police" would lead reasonable persons to conclude that she had received all the labor and FOP endorsements, when this was not the case. These statements were

in violation of Canon 7(D)(10) and (E)(1). The candidate should have noted the specific unions and FOP lodges that issued the endorsements.

Upon reviewing the hearing panel's recommendation of a public reprimand and \$5,000 fine, the judicial commission noted evidence of six separate violations of ten provisions of Canon 7 and evidence that the respondent failed to take timely and effective steps to remove the offending advertisements once the hearing concluded. Thus, the commission increased the fine to \$7,500, publicly reprimanded the candidate, and ordered the payment of court costs and the attorney fees of the complainant.

➤ *In re Judicial Campaign Complaint against Hein* (1999), 95 Ohio Misc.2d 31.

The respondent was the elected prosecuting attorney running for election against the complainant, who was the sitting common pleas judge. In a press release, the respondent criticized the sentence imposed by the complainant in a case the respondent had appealed. In campaign communications and at a public candidate's forum, the respondent referred to the complainant as a "liberal" and "soft on criminals."

Upon review of the hearing panel's report finding violations of Canon 7(B)(2)(e) and (f), the judicial commission noted the comments regarding the complainant's sentencing were related to a substantive matter in a case pending on appeal before the court of appeals. The commission rejected the respondent's argument that the comments were made by him, not as a judicial candidate, but in his capacity as the elected prosecuting attorney, noting that as a "judicial candidate" defined in Canon 7(A)(1), the respondent was obliged to comply with the requirements of Canon 7. With regard to the respondent's characterization of the complainant as a "liberal" and "soft on criminals," the commission found evidence to support violations of Canon 7(B)(2)(f) and (E)(1).

[T]he use of general, inflammatory terms or "buzzwords," such as those employed by the respondent in his printed and oral campaign communications, are inappropriate in judicial campaigns. Moreover, the terms do not allow for a fair and accurate portrayal of the record of the respondent's opponent. As such, they "would be deceiving or misleading to a reasonable person." Canon 7(E)(1).

Citing concern with the respondent's lack of familiarity with Canon 7 and "somewhat cavalier attitude toward obtaining a greater understanding," the commission imposed the sanction of a public reprimand in addition to the \$2,500 fine and attorney fees and costs recommended by the hearing panel.

➤ *In re Judicial Campaign Complaint against Runyan* (1999), 95 Ohio Misc.2d 62.

During an interview with the editorial board of a local newspaper, the respondent was alleged to have made the statement that, “If elected, I will imprison all convicted felons,” in violation of Canon 7(B)(2)(c). Upon review, a majority of the judicial commission concluded that the record made before the hearing panel did not support the finding of a violation of Canon 7(B)(2)(c) by clear and convincing evidence. The record contained conflicting evidence as to whether the comment attributed to the respondent was a direct quote by the respondent or an interpretation by the newspaper and whether the comment was an absolute pledge or promise or expression of a philosophical view. There also was some question as to whether the respondent had used the term “prison” or “incarceration.” Accordingly, a majority of the commission rejected the hearing panel’s recommendation and dismissed the complaint.

Two members of the judicial commission found that a statement to the effect that “convicted felons are going to be incarcerated” constituted a pledge or promise in violation of Canon 7(B)(2)(c).

➤ *In re Judicial Campaign Complaint against Kienzle* (1999), 96 Ohio Misc.2d 31.

In campaign materials, the respondent stated that his opponent, the incumbent judge, imposed \$430,000 in taxes on residents of Wayne County by issuing a ruling that later was reversed on appeal. The respondent went on to state that he would never impose taxes on Wayne County residents contrary to law. The Board hearing panel found these statements were contrary to Canon 7(E)(1) and recommended a fine of \$2,500 plus attorney fees and costs.

The judicial commission concurred with the panel’s finding of a violation, concluding that the respondent knew or should have known that members of the judicial branch are without power to impose taxes. The commission referenced the respondent’s undergraduate degree in political science and his experience as a high school government teacher, twenty-four years as a licensed attorney, and seven years as a magistrate. The commission rejected the respondent’s defense that his statements and the wording of the appellate opinion that reversed the complainant’s ruling were “functionally equivalent” and noted that the respondent’s statements not only were inaccurate but promoted misunderstanding of the role of the judiciary.

The commission reduced the recommended fine to \$1,000 but publicly reprimanded the respondent for his misconduct. The public reprimand was viewed as a more appropriate sanction given the fact that the respondent’s statements were harmful

to the judiciary as an institution and in view of his experience as an educator, lawyer, and judicial officer. The commission also cited prior holdings in *Morris* and *Hein* relative to the inadequacy of imposing only monetary sanctions for violations of Canon 7. The respondent also was ordered to pay attorney fees of \$4,600 and costs.

➤ *In re Judicial Campaign Complaint against Brigner* (2000), 89 Ohio St.3d 1460.

In late January, respondent's campaign committee distributed a fundraising letter that included statements asserting that his opponent " * * * has never handled a divorce case" and was " * * * a novice who lacks even one day of domestic relations experience." An enclosure distributed with the letter contained a chart contrasting the experience of respondent and complainant and claiming that complainant had no experience in various types of domestic relations cases. The Board hearing panel concluded that these statements did not violate Canon 7(B)(2)(f), but were in violation of Canon 7(E)(1), and recommended a sanction of a public reprimand, attorney fees, and costs. The hearing panel also recommended that respondent be required to return any campaign contributions received by his campaign committee from persons who received the materials upon which the complaint was based.

The five-judge commission concurred in the finding of a violation, but modified the sanction recommended by the hearing panel. The commission concluded that, "[i]n comparing respondent's violation with those committed by other judicial candidates, * * * the recommended sanction of a public reprimand [is] excessive and inappropriate." Specifically, the commission noted that prior cases in which a public reprimand was imposed involved multiple Canon 7 violations [*Burick*], wide distribution of false and misleading statements [*Morris* and *Kienzle*], and improper communications that occurred shortly before the election [*Hildebrandt*]. By contrast, the mailing distributed by respondent's campaign committee constituted a single instance of misconduct and was distributed to a limited number of individuals well in advance of the election.

In place of the public reprimand, respondent was fined \$1,000. The commission further rejected the suggestion that respondent be required to return campaign contributions received as a result of the mailing, finding that such a sanction was not specifically authorized by the rules and would be difficult to monitor. However, the commission did order the respondent to provide complainant with the names and addresses of all persons known to have received the fundraising letter so that she could accurately communicate her qualifications to those persons. The commission also ordered the payment of attorney fees totaling \$4,115 and costs.

➤ *Disciplinary Counsel v. Evans* (2000), 89 Ohio St.3d 497

Judicial candidate for an appellate court serving a fourteen-county district accepted an offer from two members of his campaign committee to construct campaign signs at no charge to the campaign. The construction work was performed in a township garage, and later at a private warehouse, using township equipment, and the free labor was performed by jail inmates on work release, welfare recipients assigned to work for the township, and a fulltime township employee. Upon discovering the manner in which the work was being performed, the candidate ordered that the work be stopped. However, he did not report the value of the facilities, material, or labor as a contribution on his campaign finance reports. Affiant also used advertisements in which he claimed to be, "Endorsed by Southern Ohio's Top Prosecutors and Sheriffs!" At the time the advertisements were distributed, the candidate had been endorsed by only five sheriffs and three prosecutors in the fourteen-county appellate district.

A judicial campaign grievance initially was filed against the candidate by two of his primary election opponents in June 1998. The following month, the grievants asked that the grievance be transferred to the Disciplinary Counsel for investigation and possible prosecution through the regular grievance process. While the matter was pending before the Board of Commissioners on Grievances and Discipline, the candidate, who had been elected to the court of appeals in November 1998, filed a defamation action against the grievants.

The Board hearing panel found the candidate's conduct in violation of Canons 7(B)(1), (C)(9), and (E)(1). Cited as aggravating factors were the candidate's admission of campaign misconduct while proceeding with a civil law suit against the grievants, his lack of candor and sincerity, and his failure to rectify misconduct of which he was aware until after a grievance had been filed against him. The hearing panel recommended a stayed, six-month suspension from the practice of law. The Board agreed with the panel's finding of a violation, but recommended that the suspension be imposed without a stay based on the candidate's lack of good faith mitigation efforts and his conduct subsequent to the filing of the grievance.

The Supreme Court affirmed the Board's finding of violations, but split 4-3 on the sanction. The majority of the Court agreed with the stayed six-month suspension, in part, finding the sanction to be comparable to that imposed in other judicial elections cases (*Hildebrandt, Harper, Burick, and Roberts*).

➤ *In re Judicial Campaign Complaint against PerDue* (2002), 97 Ohio St.3d 1427.

Respondent failed to timely complete the judicial campaign course requirement imposed by Canon 7(B)(5) of the Code of Judicial Conduct, but later completed the course and provided proof of attendance. Respondent was fined \$100, with the fine suspended, and ordered to pay costs.

➤ *In re Judicial Campaign Complaint against PerDue* (2003), 98 Ohio St.3d 1548.

Respondent was charged with three violations of Canon 7: (1) identifying himself in post-primary campaign literature as a “conservative Republican” in violation of Canon 7(B)(3)(c); (2) distributing campaign literature that alleged an individual had murdered a police officer after respondent’s opponent had placed the individual on probation; and (3) accusing contributors to his opponent’s campaign of “trying to buy a judgeship” and alleging that his opponent’s judicial decisions were for sale.

The Board hearing panel found the respondent’s conduct to be in violation of various provisions of Canon 7 and recommended a sanction of a public reprimand and imposition of costs. The five-judge commission concurred in the findings of the hearing panel but found the recommended sanction “fail to apply sufficient weight to the violations given their egregious nature.” In addition to imposing a public reprimand and ordering the payment of costs, the commission ordered the respondent to pay the complainant’s attorney fees and expenses of \$2,001.50.

➤ *Disciplinary Counsel v. Kaup*, [2004-Ohio-1525](#).

Respondent published and distributed various forms of campaign advertising that included a reference to the respondent having been endorsed by the “Neighborhood Protection Council.” No such entity existed; rather the “Neighborhood Protection Council” was a shortened version of the name of the respondent’s campaign committee. Both the hearing panel of the Board of Commissioners on Grievances and Discipline and the full Board concluded that by running the advertisements, the respondent violated Canon 7(D) [false statements as to endorsements] and Canon 7(E) [deceiving or misleading campaign information] and recommended the respondent be publicly reprimanded.

In reviewing the Board’s report and recommendation, the Supreme Court concurred in the Board’s finding of a violation of Canon 7(D) and (E). However, the Court increased the recommended sanction to a six-month stayed suspension in view of the serious nature of respondent’s misconduct and respondent’s insistence that he did

nothing wrong. The Court also cited prior judicial campaign misconduct decisions, including *Harper*, *Burick*, *Roberts*, and *Hildebrandt*.

➤ *Disciplinary Counsel v. O'Neill*, [2004-Ohio-4704](#).

Respondent was charged with six counts of judicial misconduct, including a charge that she improperly used court resources and personnel to support her candidacy for the court of appeals. The record established that respondent personally solicited campaign contributions, through her staff attorney, from the staff attorney's future employer and her husband's law firm. The testimony indicated that, near the end of a fundraising event, respondent approached the staff attorney and demanded that both the staff attorney's future employer and her husband's law firm "needed to step up to the plate and contribute to her campaign." Testimony also supported an allegation that respondent indicated the husband's law firm "owed her" for a favorable verdict in a recently concluded case tried before respondent. The Supreme Court found that respondent's use of her staff attorney to solicit campaign contributions was in violation of then-Canon 7(C)(1) and the prohibition against the solicitation of campaign funds by a judge or judicial candidate. For these and other acts of judicial misconduct, respondent was suspended from the practice of law for two years, with the second year stayed upon conditions. Respondent also was required to provide a report from a mental health professional as part of her application for reinstatement.

➤ *Disciplinary Counsel v. Spicer*, [2005-Ohio-4788](#).

In the course of his judicial campaign, respondent was charged with violating three provisions of the Code of Judicial Conduct. Respondent did not contest the allegations of Count I, that a negative television advertisement sponsored by his campaign committee and directed against his opponent violated Canon 2 (requiring that a judge act, at all times, in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and Canon 7(E)(1) (providing that a judicial candidate shall not knowingly or with reckless disregard use campaign materials that contain information concerning the candidate or an opponent, either knowing the information to be false or with a reckless disregard of whether or not it is false or, if true, that would be deceiving or misleading to a reasonable person). The advertisement that was the subject of County I of the complaint falsely and inaccurately implied that respondent's opponent, who was a sitting judge, was illegally and unethically enriching her family, that she was under investigation for misconduct, and that she was seeking election to the probate division so that she could continue her efforts to illegally and unethically enrich her family. The Board cited *Harper*, *infra*, and *Hildebrandt* and *Burick*, *supra*, in support of its

finding that respondent violated Canons 2 and 7. The Court concurred in this finding and publicly reprimanded respondent.

Count II of the formal complaint alleged that respondent failed to report, as an in-kind contribution, a \$97,466 expenditure on campaign advertising that was made by the Summit County Republican Party. Both the respondent's campaign commercials and the commercials aired by the party were produced by a company that was co-owned by the chairman and the treasurer of the county party. The party's treasurer also served as administrator of the respondent's court and assisted in organizing the respondent's reelection campaign. Because the party's treasurer was an active participant in both the respondent's campaign and the party's efforts on behalf of the respondent and because the content of the advertisements was virtually identical, Disciplinary Counsel contended that the party's expenditure was an in-kind contribution and should have been reported as such by the respondent's campaign committee. The alleged in-kind expenditure, in addition to other expenditures made by the party to the respondent's campaign committee, would have exceeded the applicable limit on campaign contributions by the party.

The Board of Commissioners on Grievances and Discipline concluded that the party's campaign advertising expenditures on behalf of the respondent were not made "with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of" the respondent, his agent, or his campaign committee. The Board recommended dismissal of Count II of the formal complaint. In reviewing the Board's recommendation and applicable law, the Supreme Court concluded that the record did not demonstrate the requisite degree of "active involvement or interaction" by respondent in the party's development and airing of its campaign advertisements. Nonetheless, the Court strongly disapproved and admonished judicial candidates to avoid the type of "intermingling of interests in election campaigns" that was present in this case.

➤ *In re Judicial Campaign Complaint Against O'Reilly*, [2006-Ohio-6212](#).

Respondent was a candidate for election to the court of appeals, and his opponent was a sitting common pleas court judge and a former assistant county prosecutor. Respondent ran a television advertisement in which he alleged that his opponent committed errors or mistakes while serving as either a prosecutor or judge in three high profile criminal cases. The advertisement stated the respondent's opponent: (1) made an error as a trial judge that allowed Larry Flynt to go free and continue selling pornography in Hamilton County; (2) placed an alleged rape victim in jail; and (3) prosecuted the only death penalty case in which the death sentence was commuted by Governor Taft. A

grievance was filed, and respondent subsequently was charged with a violation of Canon 7(E)(1) for broadcasting an advertisement that contained false, misleading, or deceiving information regarding his opponent.

Respondent moved to dismiss the complaint on the grounds that the Ohio Elections Commission failed to find probable cause that the advertisement violated the Ohio election law and that such determination barred the prosecution of an alleged violation of Canon 7(E)(1). The hearing panel denied the motion, finding that although both R.C. 3517.21(B) and Canon 7(E)(1) prohibit the dissemination of false information, the Canon further prohibits the dissemination of information that, if true, would be deceiving or misleading to a reasonable person.

The hearing panel took evidence regarding the content of the advertisement and court records related to the three cases referenced in the advertisement. Respondent contended that the statements in the advertisement were true and based on his reasonable research in the form of reviewing newspaper accounts of the three cases in question. The hearing panel concluded that even if individual portions of the campaign advertisement were not false, the entirety of the message, including the tone, production, and visual aids of the advertisement, were clearly designed to mislead a reasonable person about the opponents conduct in the three referenced cases. Specifically referencing the three portions of the advertisement, the hearing panel found the respondent's opponent (1) committed no error in signing a judgment entry that dismissed obscenity charges against Larry Flynt; (2) committed no error or mistake in issuing a "body attachment," as authorized by the Revised Code, to ensure the appearance of the complaining witness at the rape trial; and (3) did not commit any error or mistake that resulted in the commutation of a death sentence. The hearing panel went on to state that respondent was not justified in basing his campaign advertisement on newspaper accounts of the cases in question, while ignoring actual court records that contained accurate information about what transpired in each of the three cases. The hearing panel recommended issuance of a cease and desist order and imposition of a \$5,000 fine and costs against respondent.

The five-judge commission concurred in the hearing panel's factual determinations and found the advertisement in question to contain misleading and deceiving statements in violation of Canon 7(E)(1). Although respondent did not contest the hearing panel's report, he did ask the commission to consider reducing or eliminating the \$5,000 fine based on no previous disciplinary violations and three additional factors. The commission imposed a \$5,000 and costs and specifically discussed the mitigating factors cited by respondent. First, the commission found it to be of little consequence that respondent did not prevail in the election, stating that the focus should instead be on the

fact that respondent created and disseminated the campaign advertisement for the purpose of misleading or deceiving prospective voters. Second, the commission commended respondent's efforts to consult the applicable law before running the advertisement but indicated that this was an obligation incumbent on all judicial candidates as noted in *Hein, supra*. Third, the fact that respondent took immediate action to cease broadcasting the advertisement upon issuance of the hearing panel's report was not considered a mitigating factor but an appropriate response to a finding of an ethical violation. The commission stated that these factors did not lessen the seriousness of the misconduct but caused the commission to conclude that additional sanctions were unwarranted.

➤ *In re Judicial Campaign Complaint Against Lilly*, [2008-Ohio-1846](#).

Respondent was a candidate in the 2008 primary election, seeking nomination to run for election to the domestic relations division of the court of common pleas. She previously was elected to serve two full terms as domestic relations judge and was defeated for election to a third term in the 2006 election.

Respondent was charged with six separate violations of Canon 7 relative to the publication and circulation of allegedly false, misleading, or deceiving campaign materials. Following a hearing, a hearing panel found that respondent committed four separate violations of Canon 7 and recommended imposition of a \$100 fine for each count and the payment of costs of the proceeding, with the payment of such costs suspended.

The five-judge commission appointed by the Supreme Court reviewed each of the six counts of the complaint and found clear and convincing evidence with respect to three of the alleged violations:

- A violation of Canon 7(D)(3) for distributing a campaign communication that used the term "judge" prior to the candidate's name and failed to include the word "for" between the candidate's name and the term "judge." The commission conceded the violation could be termed "technical," but nonetheless found the wording of the advertisement in question to be contrary to the very specific requirements of Canon 7(D)(3).
- A violation of Canon 7(D)(1) for distributing a campaign communication that used the term "judge" prior to the candidate's name where that wording, in combination with other wording and pictures in advertisements, conveys the impression that the respondent was a sitting judge seeking to continue uninterrupted judicial service.

- A violation of Canons 7(B)(2)(f) and (D)(1) where the cumulative effect of respondent's campaign communications created the impression that the respondent was the incumbent judge running for reelection for continued service in the domestic relations division of the court of common pleas.

With respect to the third violation, the commission found that certain advertisements, standing alone, were not contrary to the advertising standards in Canon 7. Nonetheless, the improper campaign communications together with other communications that (1) used photographs of respondent in a judicial robe, (2) quoted from past newspaper articles in a way to further the suggestion of incumbency, and (3) contained the term "reelect" in conjunction with respondent's candidacy, represented a knowing effort by respondent to create the inference that she was the incumbent seeking to retain her judicial position.

The commission agreed with the hearing panel's recommendations with regard to sanctions and imposed a \$300 fine and costs, with the payment of costs suspended on the condition of no future violations of the Code of Judicial Conduct.

➤ *In re Judicial Campaign Complaint Against Beery*, [2009-Ohio-113](#).

Respondent was a candidate for election to the court of common pleas, and his opponent was a former county prosecuting attorney who had been appointed by the Governor to fill a vacancy on the court of common pleas. During the campaign, respondent broadcast a radio advertisement that included a statement claiming that his opponent "got appointed by the political bosses in Columbus." Respondent ran a separate radio advertisement and distributed a mail advertisement in which he was critical of his opponent's involvement, while serving as a prosecutor, in plea bargaining a felony charge related to a defendant's alleged rape of a minor child.

Following a hearing, a panel of the Board of Commissioners on Grievances and Discipline found two violations of Canon 7 of the Code of Judicial Conduct. The statement regarding the manner in which the complainant was appointed to the bench was found to be contrary to Canons 7(B)(2)(f) and (E)(1) as interpreted and applied in *Burick, supra*. The respondent's advertisements regarding the complainant's role in plea bargaining a sex offense were found to be in violation of the same provisions of Canon 7. Notably, the statements mischaracterized the complainant as having plea bargained a sex offense charge when, in fact, the complainant had no input to the plea agreement and was asked to step in for another prosecutor to represent the state in a sentencing hearing. Moreover, the complainant advised the respondent of the inaccuracies contained in the

radio advertisement, yet the respondent later mailed an advertisement repeating the erroneous allegations. The hearing panel also found that the respondent intentionally timed the latter advertisement so that it was received just prior to Election Day.

The hearing panel recommended that the respondent be fined \$7,500, be required to pay the complainant's reasonable and necessary attorney fees, and be assessed the costs of the proceedings. The panel further recommended a six-month suspension from the practice of law, with the suspension stayed on the conditions that the respondent pay the monetary sanctions and engage in no future ethical violations.

The five-judge commission appointed to review the report and recommendation of the Board hearing panel agreed with the panel's findings and recommendations. With regard to the recommended sanctions, the panel noted the processes that exist for adjudicating judicial campaign complaints serve multiple purposes: (1) punish behavior that is contrary to the Code of Judicial Conduct; (2) inform the legal and judicial communities of the appropriate standards governing judicial campaign conduct; and (3) deter similar violations by judicial candidates in future elections. See *Morris, Burick, and Brigner, supra*. The commission further noted that the processes serve the additional purposes of informing the public of the self-regulating nature of the legal profession and enhancing public confidence in the integrity of the proceedings. The commission found that the sanctions recommended by the hearing panel serve these purposes and again underscore the responsibility of all judicial candidates to conduct their campaigns with the same degree of honesty, dignity, and respect that, if elected, they would expect to receive from lawyers, litigants, and other members of the public.

The respondent was ordered to pay a fine of \$7,500.00 and costs totaling \$2,919.43. In addition, the commission accepted the parties' stipulation that the complainant incurred attorney fees of \$6,000.00 and ordered the respondent to pay those fees directly to the complainant. The respondent also was suspended from the practice of law for six months, with the suspension stayed on conditions of payment of the monetary sanctions and no future disciplinary violations.

➤ *In re Judicial Campaign Complaint Against Wagner*, [2011-Ohio-5478](#).

Complainant alleged that respondent violated Jud. Cond. Rule 4.3(D)(2) by displaying campaign advertisements wherein the word "for" was not prominent. The word "for" was smaller than and in the same color and print as other words on the respondent's campaign signs, t-shirts, and bumper magnets.

The three-member Board hearing panel found by clear and convincing evidence that the respondent violated Jud. Cond. Rule 4.3(D)(2) and recommended the issuance of a cease and desist order. However, the five-judge commission, by a vote of 3-2, reached a different conclusion and dismissed the complaint. The commission found that while the word “for” may not be prominent, there was no clear and convincing evidence that respondent violated Jud. Cond. Rule 4.3(D)(2) either knowingly or with reckless disregard. In addition to the lack of clear and convincing evidence, the commission cited “the imprecise definition of prominent” as the basis for its decision to dismiss the complaint. The commission further suggested that “future judicial candidates may possibly avoid a complaint or even a violation, by carefully considering how the words ‘for’ ‘vote’ or ‘elect’ are displayed in campaign material.”

➤ *In re Judicial Campaign Complaint Against Davis*, [2011 Ohio-6800](#).

Respondent’s print and electronic campaign materials indicated that he “graduated with honors from Miami University with degrees in Finance, Economics, French, and German” and “graduated with honors in degrees in Law, International Law, Finance, Economics, French, and German.” Respondent also broadcast a television commercial claiming to have “earned six college degrees in seven years.” Complainant alleged that the respondent possessed only an undergraduate degree in Business and a law degree. The undergraduate degrees claimed by the respondent were, in fact, major and minor fields of study, and the claimed degree in International Law was a graduate certificate in international trade and development.

The hearing panel found that the respondent’s use of the term “degree” in his campaign materials, without further explanation that he received only two college degrees, was false. The panel further found that the reference to the graduate certificate as a “degree” was false. As such, the respondent’s campaign advertisements violated Jud. Cond. Rule 4.3(A), (F), and (G). The panel recommended that the respondent be ordered to cease and desist from circulating campaign materials that referred to earning more than two degrees, referred to major or minor areas of study as separate college “degrees,” and referred to the graduate certificate as a college “degree.”

A five-judge commission appointed by the Supreme Court agreed with the hearing panel’s determination that the respondent’s advertisements violated three specific provisions of Jud. Cond. R. 4.3. However, the commission concluded that the respondent’s actions warranted “additional sanctions to address the severity of his conduct and deter similar violations in the future by the respondent and other candidates.” In particular, the commission was troubled by the respondent’s defiance and arguments before the commission regarding the accuracy of his advertisements. The

commission also noted that the respondent failed to comply fully with an interim cease and desist order issued by the commission by continuing to reference multiple degrees on his Facebook and campaign web pages.

Citing *In re Judicial Campaign Complaint Against Kienzle*, the commission observed that a public reprimand has been determined to be the appropriate sanction when a judicial candidate has presented facts about himself or an opponent that were false. Moreover, the respondent's clear and deliberate efforts to deceive the public and failure to comply with the terms of the interim cease and desist order merited a fine of \$5,000. The commission further ordered the assessment of costs against the respondent and payment of the complainant's attorney fees. The total monetary sanctions imposed by the commission exceeded \$15,700.

➤ *In re Judicial Campaign Complaint Against Lilly*, [2012- Ohio-1720](#).

Respondent was a former domestic relations judge running for a seat in the domestic relations division of a court of common pleas. Complainant alleged that the cumulative effect of Respondent's campaign materials created a false impression of incumbency. The materials included:

- A two-sided direct mailer with a photograph of Respondent in a judicial robe on one side and a photograph of her in a dark jacket and the phrase "Return Paulette Lilly" on the other side. The mailer included the dates Respondent was a judge on one side and the language "12 years' experience as a Domestic Relations Judge" on the other side. The mailer did not disclose that Respondent was not a judge.
- A billboard and a banner with a photograph of Respondent in the dark jacket and the words "Return Paulette Lilly for Judge." The billboard did not contain an explanation that Respondent was not a judge.
- Pages from Respondent's campaign website with photographs of Respondent in a judicial robe and dark jacket and occasional references to the dates of her former judicial service.
- A newspaper advertisement containing a photograph of Respondent in the dark jacket and the phrase "Return Paulette Lilly, Democrat for Domestic Relations Court." The advertisement stated that Respondent had 12 years of experience as a judge, but did not indicate that Respondent was not currently a judge of the domestic relations court.

The hearing panel found that Respondent violated 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 the candidate currently holds the office); and Jud.

Cond. R. 4.3(F) (misrepresentation of the candidate's identity, qualifications, or present position). Reviewing Respondent's campaign materials in total, the panel agreed with Complainant that the cumulative effect of the materials would be deceiving or misleading to a reasonable person. Because Respondent's campaign literature did not consistently identify her as a former judge, the panel concluded that the literature was confusing unless examined in detail. The panel recommended an interim and permanent cease and desist order. Also, as Respondent was sanctioned in 2008 for similar campaign conduct, the panel recommended a public reprimand, a \$3,000 fine, and an order to pay the costs of both the 2008 and 2012 campaign grievance cases. Costs in the 2008 case had been suspended, contingent on no future violations.

The five-judge commission appointed by the Supreme Court issued an interim order that Respondent "immediately and permanently cease and desist from using campaign materials and displaying billboards or other signage that uses words or phrases such as 'Return Paulette Lilly...' or that depict her in a judicial robe without a specific and prominent statement on the same page that she does not currently hold the position of judge of the court to which she seeks to be elected." The commission ultimately concluded that the charged violations of Jud. Cond. R. 4.3(A), (C), and (F) were supported by the record and agreed with the panel that a reasonable person would be confused or misled by Respondent's campaign materials. Regarding the sanction, the commission deviated slightly from the panel's recommendation. Finding that Respondent "violated similar canons on two separate occasions over the course of two campaigns," the commission determined that a public reprimand was warranted. The commission further imposed a fine of \$1,000 (not \$3,000 as suggested by the panel), and ordered that Respondent pay the costs of both the 2008 and 2012 campaign cases. The costs of both proceedings totaled \$3,633.

➤ *In re Judicial Campaign Complaint Against Michael*, [2012-Ohio-3187](#).

Respondent, who was a sitting municipal court judge running for the court of common pleas, was charged with three violations of the Code of Judicial Conduct: (1) a violation of Jud. Cond. R. 4.4(J)(1) by receiving a campaign loan of \$25,000 from her former husband; (2) a violation of Jud. Cond. R. 4.4(B) by permitting a public employee subject to her direction or control to solicit or receive campaign contributions; and (3) a violation of Jud. Cond. R. 4.3(C) by using the title "judge" in a manner that implied she was a common pleas court judge.

The hearing panel dismissed the alleged violation of Jud. Cond. R. 4.4(B) and found violations of Jud. Cond. R. 4.4(J)(1) and 4.3(C). With regard to the acceptance of a \$25,000 campaign loan from her former husband, the panel rejected Respondent's

contention that her former spouse was a “domestic partner,” as that term is used in Jud. Cond. R. 4.6(C), based on the existence of a shared parenting agreement, joint access to homes, and joint attendance at family events. With regard to the alleged violation of Jud. Cond. R. 4.3(C), the panel found that the phrase “Vote Judge Kathryn Michael for Common Pleas Court” violated the rule because Respondent failed to reference her current position as a municipal court judge. The panel recommended issuance of a cease and desist order and payment of costs.

Upon review, the five-judge commission affirmed the findings of the hearing panel. The commission rejected Respondent’s contention that her ex-husband was a domestic partner, stating that such a contention “strains credibility.” The commission also rejected Respondent’s argument that she did not knowingly or with reckless disregard violate Jud. Cond. R. 4.3(C), finding that her experience as a four-time judicial candidate and attendance at mandatory judicial candidate seminars underscored the panel’s conclusion that Respondent acted recklessly.

The five-judge commission took a slightly different view of the Respondent’s misconduct in imposing a sanction. The commission characterized Respondent’s receipt of an excessive campaign loan “an egregious violation of the canon that calls for a monetary sanction,” notwithstanding respondent’s repayment of the loan. The commission further indicated that Respondent’s misuse of the title “judge” was “inexcusable given [her] history of multiple prior judicial candidacies and attendances at such seminars.” The commission imposed a fine of \$2,500, ordered the payment of \$2,500 of complaint’s attorney fees, and ordered the payment of the costs of the proceedings.

➤ *In re Judicial Campaign Complaint Against O’Neill*, [2012-Ohio-3223](#).

Respondent, who was a former judge, was charged with a violation of Jud. Cond. R. 4.3(C) as a result of his circulation of campaign literature that referred to him by the title “judge.” At the hearing and before the five-judge commission, Respondent contended that he was permitted to use the title “judge” based on his assignment by the Chief Justice to perform a marriage ceremony and other documents in which he was referred to as a judge. The hearing panel concluded that a retired judge is not permitted by Jud. Cond. R. 4.3(C) to use the title “judge” if he or she does not currently hold judicial office. The panel further recommended the sanction of both an interim and permanent cease and desist order. The commission of five appellate judges appointed by the Chief Justice of the Courts of Appeals concluded that the panel’s finding was supported by the record and issued a cease and desist order.

By a vote of 7-6, an adjudicatory panel of 13 appellate judges found that Jud. Cond. R. 4.3(C), as applied to the Respondent, was unconstitutional and reversed the finding of the five-judge commission. The dissent would have affirmed the five-judge commission's order based on Respondent's failure to raise the constitutional issue before either the hearing panel or five-judge commission.

➤ *In re Judicial Campaign Complaint Against Michael*, [2012-Ohio-5054](#).

Respondent presided over a sentencing hearing that involved her acceptance of a plea agreement negotiated by the prosecution and defense. After the defendant expressed his appreciation to the judge for "helping" him out by accepting the reduction of the charged offense from a felony to a misdemeanor and suspending his jail sentence, the respondent proceeded to ask the defendant to "tell all your family how you feel about me because I'm running this year for the Common Pleas Court." Based on these comments, respondent was charged with violations of Jud. Cond. R. 1.2 and 4.1(A)(6)

At the hearing, the respondent testified that her comments were light-hearted, sarcastic, and off-the-cuff. However, she admitted the statements were imprudent, inappropriate, and regretful. The panel found the respondent's comments implied that she was accepting a guilty plea to a reduced charge and imposing a suspended sentence in exchange for support in her judicial campaign. The panel also found that the comments had and will have the effect of undermining public confidence in the judicial system. Citing respondent's previous judicial campaign violation and decisions in *Lilly #2*, *Morris*, *Davis*, and *Burick*, the hearing panel recommended imposition of a public reprimand to deter the respondent from further misconduct, inform the public of standards governing judicial conduct, and deter similar violations in future judicial campaigns. The panel also recommend the payment of costs.

The five-judge commission agreed with the panel's findings, noting that the respondent's comments were clearly prejudicial to public confidence in the judiciary and could be construed as a statement affecting the outcome of a pending proceeding. In addition to the factors cited by the hearing panel in support of a public reprimand, the commission noted the temporal proximity of the respondent's violations, both coming in the same election cycle. For this reason and the seriousness of the respondent's violations, the commission also imposed a \$5,000 fine as well as costs of \$1,308.

➤ *In re Judicial Campaign Complaint Against Moll*, [2012-Ohio-5674](#)

Respondent circulated a campaign flyer that included a photograph of herself wearing a judicial robe and a bullet-point notation identifying herself as "Magistrate,

Guernsey County.” Although the respondent’s service as a magistrate ended in 2009, neither the photograph nor the bullet-point notation included any years of service. The hearing panel found the respondent misrepresented the respondent’s present position and title by approving and disseminating the flyer, in violation of Jud. Cond. R. 4.3(A), (C), and (F), and both the five-judge commission and Supreme Court concurred in this finding. The Court’s opinion referenced Board Advisory Opinion 2003-8 and *Lilly I* and *Lilly II*.

The hearing panel recommended issuance of both interim and permanent cease and desist orders and imposition of a \$1,000 fine and costs of the proceeding, with payment of the fine stayed on the condition of no further judicial campaign violations. Although both the five-judge commission and Supreme Court affirmed the panel’s findings, the five-judge commission ordered the respondent to pay the \$1,000 fine, costs, and \$2,500 of the complainant’s attorney fees. The Supreme Court affirmed the commission’s order, finding no abuse of discretion.

➤ *In re Judicial Campaign Complaint Against O’Toole*, [2014-Ohio-4046](#).

Respondent was charged with violating Jud. Cond. R. 4.3(A) and (E) based on the use and circulation of campaign materials that conveyed the impression she was a sitting judge. On her campaign website, she was referred to as “Judge O’Toole” and there was no indication that her term on the bench had ended in 2010. In addition, there was wording in her on-line biography that reinforced the impression that she was a sitting judge. Respondent also appeared in public wearing a name badge that read “Colleen Mary O’Toole Judge 11th District Court of Appeals.” Respondent had served as an appellate judge from 2005-2010, was defeated in her bid for reelection in the 2010 primary, and was running in 2012 to return to the appellate court. In addition, respondent testified at the hearing that she believed she had a right to refer to herself as a judge based on her prior service and denied that her campaign communications were misleading or deceiving.

The hearing panel found violations of Jud. Cond. R. 4.3(A) and (E) based on the content of the respondent’s campaign website and her use of the name badge. The panel further concluded that these communications were part of an effort by the respondent to portray herself as an incumbent judge. The panel recommended issuance of a cease and desist order and imposition of a \$1,000 fine and recommended that respondent be ordered to pay attorney fees and costs.

Upon review, the five-judge commission concurred in the violations found by the hearing panel. In addition, the commission found respondent’s conduct was

distinguished from that in *Moll* and *Lilly* in that respondent did more than simply omit key facts from her campaign materials. Rather, the commission concluded that respondent's "conduct demonstrates that she is deliberately flouting the very rules that govern judges and candidates alike." Citing the respondent's testimony that she believed she was entitled to refer to herself as "judge" in direct contravention of the Code of Judicial Conduct, the commission ordered the imposition of a public reprimand in order to maintain the integrity of judicial elections. The commission further imposed a \$1,000 fine and ordered the payment of \$2,500 in attorney fees and costs of \$2,530.

Respondent appealed the commission's order to the Supreme Court, contending that Jud. Cond. R. 4.3(A) was unconstitutional and asserting the sanction imposed by the commission was the result of passion and prejudice and unsupported by the record.

The Supreme Court agreed, in part, with the respondent's constitutional arguments and struck that portion of Jud. Cond. R. 4.3(A) that prohibited communications that, if true, would be nonetheless misleading or deceiving to a reasonable person. Based on that holding, the Court dismissed the rule violation that was predicated on the content of the respondent's website. However, the Court found the balance of Jud. Cond. R. 4.3(A) to be constitutional and determined the respondent's conduct in wearing a name badge that identified her as a judge was "a misrepresentation that she knew was patently false." The Court further affirmed the issuance of a public reprimand and the imposition of fines, fees, and costs totaling \$6,030.

➤ *Disciplinary Counsel v. Tamburrino*, [2016-Ohio-8014](#)

Respondent was charged with violations of Jud. Cond. R. 4.2(A)(1) and Jud. Cond. R. 4.3(A) based on the content of two campaign commercials that were aired during the final days of the 2014 general election campaign. One commercial criticized his opponent's concurring opinion in which a majority of the court of appeals ruled that police could not enter a home without a warrant to arrest a parent who was hosting a teenage drinking party. The audio portion of the advertisement stated that the opponent "felt teenage drinking wasn't a serious crime" and "doesn't think teenage drinking is serious." The video portion of the advertisement showed a robed individual standing at a courtroom bench pouring shots of whiskey for children and reiterated that the respondent's opponent "doesn't think teenage drinking is a serious offense." The second commercial, also released a few weeks before the election, claimed that the respondent's opponent refused to "disclose his Taxpayer Funded Travel Expenses."

The respondent's opponent notified the respondent, in writing and in news releases, that the statements contained in each commercial were false. The respondent

continued to run the commercials and issued his own news release reaffirming the truthfulness of the statements and accusing his opponent of fabrications and false accusations.

A hearing panel of the Board of Professional Conduct found the teenage-drinking commercial contained patently false statements about the respondent's opponent and that respondent acted knowingly or with reckless disregard about the false statements. The panel also found the statements in the respondent's commercial represented conduct inconsistent with the independence, integrity, and impartiality of the judiciary. The panel made similar findings with respect to the expense-disclosure commercial, finding the opponent's travel expenses had been disclosed publicly and that respondent had never made a request for disclosure of the expenses. The hearing panel recommended a sanction of a six-month stayed suspension. The full Board recommended a one-year suspension with six months stayed, citing the respondent's refusal to acknowledge his blatantly false advertisements and a concern over the chilling effect the advertisements could have on the ability of a judge to freely state his or her views in court opinions.

On review, the Supreme Court overruled the respondent's objections, including his constitutional and procedural arguments, and adopted the Board's findings and recommendations. The Court specifically noted the respondent's continued airing of the commercials after having been put on notice of their falsity and the respondent's lack of remorse and refusal to acknowledge any wrongdoing. The Court concluded by stating:

[Respondent's] misconduct impugned the integrity of his opponent as a jurist and public servant. It endangered the independence of the judiciary and lessened the public's understanding of public records and the protections of the Fourth Amendment.

➤ *In re Judicial Campaign Complaint Against Sherron*, [2017-Ohio-8776](#)

Respondent was charged with two violations of the Code of Judicial Conduct based on the content of campaign communications. In one communication, the respondent posted a resume on Facebook that included the phrase "Licensed to practice in all courts in the State of Ohio and all Federal Courts." Although admitted in Ohio, the respondent was admitted to practice in only the U.S. District Court for the Southern District of Ohio. The false statement regarding his federal court licensure violated Jud. Cond. R. 4.3(I).

A second communication related to invitations to a fundraising event hosted by the respondent. A paper invitation was mailed by the respondent's campaign committee

that invited persons to a fundraising event “FOR MIDDLETOWN MUNICIPAL COURT JUDGE James Sherron.” An email communication containing the same language was sent via email by the county political party. The hearing panel found that the respondent’s conduct in distributing a paper invitation that contained the title “judge” immediately preceding the respondent’s name, was a violation of Jud. Cond. R. 4.3(C). The panel did not find a violation with regard to the email communication distributed by the political party.

After considering the respondent’s misconduct, the fact that the false statement regarding licensure had been rectified, and case precedents, the panel recommended a fine of \$200 for the Jud. Cond. R. 4.3(I) violation and a \$600 fine for the Jud. Cond. R. 4.3(C) violation. A five-judge commission appointed by the Supreme Court adopted the panel’s findings and imposed the recommended sanction.

- *In re Judicial Campaign Complaints Against Lombardi & McCarty*, [2018-Ohio-5173](#)

Respondents were former judges who were seeking to return to the bench. In their 2018 campaigns, each respondent used campaign materials (banners, t-shirts, buttons, etc.) that he had used in a prior campaign for judicial office that failed to satisfy the “prominent lettering” standard contained in Jud. Cond. R. 4.3(D) and defined in Jud. Cond. R. 4.3. As an aggravating factor, the hearing panel found that each respondent failed to review his prior campaign materials, as required by Jud. Cond. R. 4.2(A)(2), to determine whether those materials satisfied the standards applicable to judicial campaign conduct in 2018. The panel also noted that each candidate attended the required judicial campaign conduct seminar and certified both completion of the course and understanding of the requirements of the Code of Judicial Conduct. Based on these findings and a determination that the respondents had ceased using the incorrect materials prior to the hearing, the hearing panel recommended a fine of \$1,200 for each respondent. The hearing panel’s findings and recommendation were adopted by the five-judge commission.

- *Disciplinary Counsel v. Horton*, 158 Ohio St.3d 76, [2019-Ohio-4139](#)

Respondent was a court of appeals judge who violated multiple provisions of the Code of Judicial Conduct. In one count, he violated state law by failing to file complete and accurate campaign finance statements. The statements included unreasonable and excessive campaign expenditures for a private dinner, a fundraising event attended largely by his court and campaign staff, and the purchase of cigars. This conduct and the resulting criminal convictions violated Jud. Cond. R. 1.2 and Prof. Cond. 8.4(b). In a

second count, the respondent violated Jud. Cond. R. 1.2 and 4.4(B) by allowing his judicial staff to perform campaign activities during work hours, using county resources for his judicial campaign, and directing his judicial staff to be involved in the receipt of campaign contributions. A third count involved the judge's sexual harassment of a staff member and a law student intern. The Supreme Court underscored the responsibility of a sitting judge to impose "clear rules prohibiting campaign work on county time or using county resources and strictly enforcing those rules. * * * [M]erely encouraging * * * judicial staff to attend a judicial-campaign seminar did not fulfill his obligation to ensure that his staff did not conduct campaign work on county time." The Board recommended and the Supreme Court imposed an indefinite suspension.

➤ *In re Judicial Campaign Complaint Against Falter*, 164 Ohio St. 3d 457, [2021-Ohio-1705](#)

Respondent was found to have violated Jud. Cond. R. 4.3(A) by falsely stating in a campaign communication that her opponent moved to Hamilton County in 2017 earlier to accept a judicial appointment from the Governor. Evidence at the hearing established that her opponent moved to Hamilton County 2014, some three years before being appointed to the bench. Respondent claimed the statements in her campaign communication were based on "common knowledge" in the Hamilton County legal community and that she relied on information provided by two paid campaign consultants. However, she made no effort to verify the accuracy of the statement through public records or other means. The hearing panel recommended imposition of a public reprimand and a fine of \$1,000, and the five-judge commission adopted the findings and recommendation of the hearing panel.

Respondent objected to the findings and recommendation, advancing constitutional arguments and asking to have the public reprimand vacated. The Supreme Court overruled the objections and affirmed imposition of a public reprimand, fine, and costs. The Court expressly held that a "judicial candidate cannot avoid discipline by claiming that she merely repeated statements from her campaign consultants without taking some action to ensure the accuracy of these statements or inquiry about the credibility of the sources." The Court also rejected respondent's argument that the sanction should be vacated due to negative media attention and her loss of the election.