

SUPREME COURT OF OHIO

In re Judicial Campaign Complaint Against Lilly

117 Ohio St. 3d 1466 (Ohio 2008) · Decided April 18, 2008

SUMMARY

A five-judge commission appointed by the Supreme Court of Ohio reviewed judicial campaign-misconduct allegations against Paulette Lilly. The commission found clear and convincing evidence that several campaign communications violated Ohio judicial-conduct rules by creating an impression of incumbency and using improperly ordered campaign language. Lilly was fined \$300, assessed costs, and had payment of costs suspended subject to no future related violation.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Jeffrey E. Froelich, Chair; Lillian Greene; Frederick Hany; Dana Preisse; Russell Steiner
JURISDICTION	Ohio
DECIDED	April 18, 2008
DISPOSITION	other
PROCEDURAL POSTURE	A five-judge commission appointed by the Supreme Court of Ohio independently reviewed a judicial campaign-misconduct complaint after a Board of Commissioners on Grievances and Discipline hearing panel found four Canon 7 violations and recommended fines.
STANDARD OF REVIEW	Independent determination whether clear and convincing evidence supported each alleged Canon 7 violation.
PRECEDENTIAL VALUE	Published opinion of a five-judge commission appointed by the Supreme Court of Ohio in a judicial campaign-misconduct proceeding.

TOPICS

[election law](#) [administrative law](#) [agency adjudication](#) [judicial review of agency action](#)

PRACTICE AREAS

[election law](#) [judicial discipline](#) [professional responsibility](#) [administrative law](#)

QUESTIONS PRESENTED

1. Whether the wording "Re-elect FOR JUDGE Paulette LILLY" on a campaign towelette violated Canon 7(D)(3)'s required placement of the words "elect," "vote," or "for" when a candidate uses the term "judge."
2. Whether placing the term "JUDGE" immediately before Lilly's name violated Canon 7(D)(1) by implying that she currently held judicial office.
3. Whether Lilly's use of the term "re-elect" misrepresented the office for which she was previously elected in violation of Canons 7(B)(2)(f) and 7(D)(4).
4. Whether the phrase "Re-elect Democrat Paulette Lilly for Judge Domestic Relations Court" knowingly misrepresented Lilly's political identity in violation of Canon 7(B)(2)(f).
5. Whether Lilly's photograph in a judicial robe and the phrase "12 years Judicial Experience 1995-2007" violated Canon 7(B)(2)(f).
6. Whether the cumulative effect of Lilly's campaign communications created the impression that she was an incumbent judge, violating Canons 7(B)(2)(f) and 7(D)(1).
7. What sanction was appropriate for the established Canon 7 violations.

HOLDINGS

1. The campaign towelette violated Canon 7(D)(3) because the wording did not place the terms "for," "elect," or "vote" in the order and manner required by the canon.
2. The towelette label violated Canon 7(D)(1) because placing "JUDGE" immediately before Lilly's name implied that she currently held the office.
3. The complainant failed to establish violations of Canons 7(B)(2)(f) or 7(D)(4) based on Lilly's use of the term "re-elect" because the office's jurisdiction had changed while Lilly was still serving, and she had served in a court with jurisdiction identical to that of the office she sought in 2008.
4. The phrase did not violate Canon 7(B)(2)(f) because it was reasonably susceptible to an interpretation conveying Lilly's current party affiliation rather than falsely stating that she had previously been elected as a Democrat.
5. The photograph of Lilly in a judicial robe, accompanied by "12 years Judicial Experience 1995-2007," did not establish a Canon 7(B)(2)(f) violation because Lilly had in fact served as a judicial officer for twelve years.
6. The cumulative campaign communications violated Canons 7(B)(2)(f) and 7(D)(1) because they were knowingly designed to create the inference that Lilly was an incumbent judge seeking reelection.
7. The commission imposed a \$300 fine, assessed the costs of the proceedings, and suspended payment of costs on the condition that Lilly commit no future Code of Judicial Conduct violation related to campaign conduct.

KEY QUOTATIONS

"We agree with this conclusion and find the existence of clear and convincing evidence that respondent violated Canon 7(D)(3) by distributing campaign materials that contained wording contrary to the very clear

requirements of the canon.” (1468)

“From the totality of the record before us, there is clear and convincing evidence that respondent was aware that the overall content of her campaign communications would likely cause some voters to conclude that she was an incumbent judge, a conclusion that could affect the outcome of a closely contested election.” (1471)

“Accordingly, it is the order of this commission that respondent shall be fined \$300, that respondent be assessed the costs of these proceedings, and that the payment of costs be suspended on the condition of no future violation of the Code of Judicial Conduct related to campaign conduct.” (1471)

FACTUAL BACKGROUND

Paulette Lilly, a former two-term judge of the Lorain County Court of Common Pleas, Domestic Relations Division, sought the Democratic nomination for the 2008 election after previously serving as a Republican nominee. Her campaign distributed a moistened towelette, postcard, and newspaper advertisements containing phrases such as "Re-elect ... Paulette Lilly for Judge" and depicting her in a judicial robe. The campaign materials also used the phrase "12 years Judicial Experience 1995-2007" and other present-tense statements that, viewed cumulatively, suggested that Lilly was an incumbent judge seeking reelection.

PROCEDURAL HISTORY

Kraig Brusnahan filed a judicial campaign grievance against Paulette Lilly alleging seven Canon 7 violations. A probable-cause panel found probable cause on six allegations, and the Board's hearing panel later found four violations by clear and convincing evidence and recommended four \$100 fines, costs, and suspended payment of costs. The Supreme Court of Ohio appointed the five-judge commission to review the certified record; Lilly waived objections to the hearing panel's findings and recommendations.

DISPOSITION

other

CASES CITED

- In re Judicial Campaign Complaint Against Carr, 74 Ohio Misc. 2d 81, 88, 658 N.E.2d 1158 (1995)