

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 16-296

Judge: Maria L. Felix

Complainant: Nancy Knox-Bierman

ORDER

The complainant alleged a justice of the peace committed various campaign violations including coordinating her political campaign with another candidate for public office and endorsing that person's candidacy.

Rule 1.2 of the Code of Judicial Conduct states, "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Rule 1.3 states, "a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." Rule 4.1(A)(3) states a judge shall not "publicly endorse or oppose another candidate for any public office." Finally, Rule 4.1(A)(5) states a judge shall not "actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office."

Judge Felix gathered signatures for five nominating petitions for her judicial precinct's constable, Colette Philip, which violated the above-cited rules, as well as Formal Ethics Advisory Opinion 03-05 (Participation of Judges, Family Members, and Judicial Employees in Political Activities). By circulating such petitions, Judge Felix publicly endorsed Ms. Philip for the office of constable and actively participated in her campaign. Additionally, by circulating petitions for Ms. Philip, Judge Felix abused the prestige of her judicial office to advance Ms. Philip's private interests.

Accordingly, Judge Maria L. Felix is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

This order may not be used as a basis for disqualification of a judge.

Commission members Peter J. Eckerstrom and Art Hinshaw did not participate in the consideration of this matter.

Dated: February 6, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on February 6, 2017.

This order may not be used as a basis for disqualification of a judge.

Comp

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2016-296

Arizona Commission On Judicial Conduct
1501 W. Washington Street
Suite 229
Phoenix, Arizona 85007

Re: Pima Chief Administrative Judge Maria Felix

I am a Pima County candidate for a justice of the peace position. I am subject to the Canons as a judicial candidate and I therefore read those and the advisory opinions on judicial elections. I also researched my opponent-sitting judge Maria Felix. I believe that I am obligated to report what I have found.

Chief Administrative Judge Felix gathered her nomination signatures by three significant violations of the Canons. First, she clearly ran a coordinated political campaign with her precinct's constable Colette Philip. Second, she personally gathered 5 petitions for Philip. (Advisory Opinion 03-05). **A** Third, her actions betray an outright prohibited endorsement of another's political campaign by a sitting judge.

Pima Chief Administrative Judge Maria Felix personally circulated petitions numbers # 12, 54, 55, 52 and 53 for constable Colette Philip. With the exception of petition # 12 (which Pima Chief Administrative Judge Maria Felix personally circulated on April 2, 2016) all the other four petitions were personally circulated by Pima Chief Administrative Judge Maria Felix on March 22, 2016.

Only four people gathered signatures for Pima Chief Administrative Judge Maria Felix – herself, her husband Gilbert Felix, her son Abram Aguilar and constable Colette Philip. There is significant overlap in the signatures gathered on the dates in question. **B** Hence the Commission will note that on the Judge's sheet 2 for April 2nd the signatures are virtually the same as in Philip's sheet #12.

Further, by the inclusion of the judge's petition picture (and whatever she said to the voter) the elector knows exactly who is before them. While I submit that this is sufficient to raise concern there are other examples that show campaign coordination as well. **C**

There are several very serious allegations before this Commission. In reaching whatever decision it makes this Commission must also consider that this judge has publicly held herself out as an exemplar of ethics by bringing at least one ethical accusation against another judge before this Commission previously (Complaint 09-041), she has been an

2016-296

attorney since 1996 (20 years), she has been a judge for almost 11 years now, she has been presiding judge from 2008-2010 and now is Pima Chief Administrative judge for three years since 2013. Finally, this is now her fourth election- unlike me she is not a novice. In other words, this is clearly a person that knows what she is doing and yet shows little regard for the very rules that she is charged with protecting.

~~Respectfully,~~

Nancy K. Bierman
205 S. Park Ave., Apt. A
Tucson, Arizona 85719

October 12, 2016

Pima County
Consolidated Justice Courts
TUCSON, ARIZONA 85701-1199

Resp

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2016-296

HONORABLE MARIA LILIA FELIX
CHIEF ADMINISTRATIVE JUDGE
PIMA COUNTY CONSOLIDATED JUSTICE COURT
PRECINCT 9

240 N. STONE AVENUE
TELEPHONE: (520) 724-3505
FAX: (520) 222-1842

November 28, 2016

Members of the Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

RE: Case No. 16-296

Members of the Commission:

This is in response to the Complaint filed in Case No. 16-296.

As a prelude, I wish to advise the Commission that Ms. Nancy Knox-Bierman was my opponent in the 2016 election race for Justice of the Peace. Prior to the primary, Ms. Knox-Bierman challenged my Nomination Petitions in Pima County Superior Court and lost her challenge. I do not dispute her right to challenge, but suggest that retaliation for losing that case is the motivation for filing this Complaint.

I also draw the Commission's attention to Complaint 09-041, which Ms. Knox-Bierman mentions in her present Complaint. Number 09-041 was a complaint I filed in my capacity as the Presiding Justice of the Peace against former JP Anne Segal resulting in a public reprimand. Prior to the primary election of 2016, Ms. Knox-Bierman and Ms. Segal were seen several times together at the Pima County Recorder's office gathering information on election petitions. No challenges were filed against any other candidate by either of these women so I suggest they were gathering information only on me and that they collaborated on the allegations in this Complaint in retaliation for filing Complaint 09-041. Furthermore, Ms. Segal also used the same copies of my Nomination Petitions 2016 as disclosure on C20150222, Watters vs. Segal, wherein I am listed as a witness for the Plaintiff in his defamation case against Defendant Anne Segal.

Please do not consider the above as a personal attack from me on the present Complainant but all of this taken together I suggest is strong evidence of a vexatious motive.

My arguments and defenses are as follow:

2016-296

CIRCULATORS:

My husband Gilbert Felix and my son Abram Aguilar are my family members mentioned in the complaint. They participated previously as Circulators for my Nomination Petitions and instructed to tell all qualified electors that signing the petition only gets my name on the ballot, and does NOT mean that electors are endorsing me or that they are committing to voting for me. My Circulators provide a handout which electors are free to read and my Circulators encourage qualified electors to investigate my qualifications prior to the election. These family members identify themselves as my husband or son, and they clearly acknowledge that they would appreciate a vote for me on Election Day, thus this is an endorsement.

When circulating Nomination Petitions for Colette Philip, these same Circulators were instructed only to seek qualified electors to sign the Petition, not commitments to vote for the nominee. No handouts were given to electors, and no endorsements. These same Circulators were instructed to tell all qualified electors the same as for my Petition: that signing the Petition was only to get that person's name on the ballot. When asked about Ms. Philips, or if asked why they should vote for her, they were instructed to simply state that they were Circulators only and that each elector must do their own investigation to find out particulars about Ms. Philip and to make their own decision on whether to vote for her on Election Day.

As concerns Ms. Philip obtaining Nomination Petition signatures for me, Ms. Philip has a Constitutional right to participate in the political process and is free to collect elector signatures for whichever future candidate she supports. She has not violated any rules to my knowledge. What she told electors while gathering signatures on my Petition is her free-speech right. She is a Constable serving in my Precinct so it was also reasonable to see her at the same election gatherings where we would chat and catch up on events. This is common courtesy.

Furthermore, on Presidential Preference Election Day on March 22, 2016, many Circulators were out at election locations. It is an ideal day to meet qualified electors and collect signatures. By happenstance Ms. Philip and I and my Circulators saw each other many times at various locations during that day. Thus, collecting signatures on our respective Nomination Petitions from the same voters where we happened to be standing at the same place is not at all surprising. Nothing is improper about this. For this Ms. Knox-Bierman suggests campaign coordination and Judge Felix denies this categorically. (See Affidavit from Ms. Philip, Exhibit 1.)

DEFINITIONS:

Webster's Dictionary defines "Petition" as a request.

Webster's Dictionary defines "Endorsement" as a public or official statement.

The Nomination Petition, page two, requires the Circulator of a Nomination paper to "verify that each of the names on the petition was signed in my presence on the date indicated and that in my belief each signer was a qualified elector who resides at the address given as their residence on the date indicated." By definition, it is a "verification," and not an "endorsement." (See Exhibit 2.)

Per ARS 16-311(J)(2): "Nomination paper" means the form filed with the appropriate office by a person wishing to declare the person's intent to become a candidate for a particular political office." Per this statute, a person is merely filing Nomination Papers to reflect an intent. That person is free to change their intent and decide not to become a candidate. As an example, a sitting Pima County JP gathered signatures on March 22, 2016 on her Nomination Petitions with the intent to become a candidate for re-election but later decided not to

file her papers and thus, her intent changed and she never became a candidate for JP.

Per ARS 16-315 and 16-321: These Statutes address the “Circulator” instructions and neither statute suggests or implies that a Circulator will be “endorsing” the candidate. In fact, there are instructions for paid Circulators so it is clear that a Circulator can also be a paid staff member. As a paid Circulator, it cannot possibly be suggested that this Circulator is thereby also being paid to declare his/her endorsement.

ARGUMENT:

Ms. Knox-Bierman states that I committed three violations of the Canons.

1. That I ran a coordinated political campaign with Colette Philip.

False. I never ran a coordinated political campaign with Ms. Philip. I had unintentional, unplanned, and accidental contacts with her on March 22, 2016. As stated above, that was the day of the Presidential Preference election and I kept running in to not only Ms. Phillip, but also to many other Circulators. It is common to see many other Circulators gathering signatures for their own Nomination Papers or on behalf of others. It is an excellent day to collect signatures from the election sites as signatures gathered will be from qualified electors who know they are qualified to vote. Therefore, it is easy to see why some of the signatures were the same on my petition as they were on Ms. Philip’s petition. These chance encounters are absolutely not an indication of running a coordinated political campaign with Ms. Philip.

On April 4, 2016, my husband and I decided that morning to gather more signatures alone and found that we still had some unsigned petitions for Ms. Philip. We went out on our own route. Ms. Philip was not present on that day anywhere we went. If Ms. Philip gathered signatures on that day, it was her independent decision.

2. That I personally gathered 5 Petitions for Ms. Phillips.

True. I did sign the backs of Nomination Petitions for Ms. Colette Philip dated 3/22/16 and 4/2/16. I did not endorse her publicly but merely witnessed qualified electors sign her Petitions. When asked about Ms. Philip, I answered as stated several times above, that I was a Circulator and that each qualified elector must do their own research and make their own decision. Further, it must be noted that Ms. Philip was also not a candidate at that point, but merely at the stage of gathering signatures with an intent to become a candidate.

Comment (4) explains that a judge may not give public speeches or publicly endorse another candidate; however, it also states that a judge is not prohibited from making recommendations. In this case, I never gave a public speech, never gave any public endorsement, and not ever even suggested a recommendation for Ms. Philip.

3. That “actions betray an outright prohibited endorsement of another’s political campaign by a sitting judge.”

False. The alleged actions are not an outright endorsement of another’s political campaign. I had absolutely no intent to endorse anyone. I am not aware of any authority that suggests that a “Circulator” is also an “Endorser.” Likewise, I am not aware of any authority that prohibits a sitting judge or judicial candidate from signing a petition for another candidate.

If the Judicial Ethics Advisory Panel issues an Opinion stating that my activities may be misinterpreted by the public as endorsing another candidate, then I will certainly refrain from doing so in the future. However, as concerns the allegations made in this Complaint, I had no notice or reason to believe that my conduct could constitute a violation of the Canons.

For all of the reasons and authority stated, I respectfully request that the Complaint in Case No. 16-296 be dismissed in its entirety.

Very truly yours,

Maria L. Félix
Justice of the Peace
Pima County Consolidated Justice Court

Encs.