

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 16-329

Judge: Andrew Hettinger

Complainant: Commission on Judicial Conduct

AMENDED ORDER

I. BACKGROUND

On February 6, 2017, the Commission on Judicial Conduct publically reprimanded Judge Andrew Hettinger (hereinafter Respondent) finding that the Respondent's conduct as a judicial candidate violated multiple rules in Canon 4 of the Code on Judicial Conduct (Code). On February 16, 2017, Respondent filed a request for a formal hearing pursuant to Commission Rule 23 (b)(2). Pursuant to Commission Rules 23 (b)(2)(B) and 24 (a), formal charges were filed on February 27, 2017. A Response was filed on March 14, 2017. Formal Hearing before the Commission was then scheduled for May 15, 2017. On May 10, 2017, the parties filed Joint Prehearing Statement, Stipulated Facts for Formal Hearing, and Stipulated Code of Judicial Conduct Violations.

II. FORMAL HEARING

The formal hearing was held before the Commission on May 15, 2017. The Stipulated Facts for Formal Hearing and the Stipulated Code of Judicial Conduct Violations were accepted and adopted by the Commission. The Stipulated Final Exhibits List and admission of eleven exhibits for the hearing were accepted, and the exhibits were admitted. The Respondent testified at the hearing.

III. FINDINGS OF FACT

By stipulation, the following facts were accepted and adopted by the Commission:

1. The Commission has jurisdiction of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution and the Rules of the Commission.
2. Respondent has served as a justice of the peace in Maricopa County, Arizona since January 2017, and continues to hold that position.

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3. As a judicial candidate and judge, Respondent was and is subject to the Code of Judicial Conduct (Effective 09/01/09, last amended 11/24/09) as set forth in Supreme Court Rule 81.

4. At all times relevant to the allegations of misconduct in the Statement of Charges, Respondent was a judicial candidate, subject to the provisions of Canon 4 of the Code.

5. In 2016, Respondent, then thirty years of age and licensed as an attorney for over two years, was a Republican candidate for Justice of the Peace for the Moon Valley precinct in Maricopa County, Arizona.

6. During his campaign, Respondent engaged in various campaign activities, including establishing and maintaining campaign websites and a social media page.

7. Respondent's campaign-related website was www.andrewhettinger.com. After the November 2016 general election, Respondent deactivated this website.

8. Respondent used a Facebook page for campaign purposes, which was open to the public.

9. Respondent's Facebook page contained a small image, approximately the size of a business card or postcard, with a logo that stated "Andrew Hettinger Justice of the Peace." The logo did not contain the words "elect" prior to the candidate's name, or the word "for" in between the candidate's name and the position sought, as required by the Code.

10. Within the "About" section of Respondent's Facebook page next to the logo, Respondent stated: "Andrew Hettinger is a Republican Candidate for Justice of the Peace in the Moon Valley precinct."

11. The logo appeared on Respondent's Facebook page from approximately July 2015, when the page was created, until approximately May 12, 2016, when Respondent removed the logo after receiving correspondence from the Commission regarding the potential Code violation.

12. Respondent initially had two other primary challengers – Travis Pullen and Carl Seel – for the position of Justice of the Peace for the Moon Valley precinct.

13. Respondent obtained a domain name – www.tpullen.com – which is close to the name of one of his opponents, Travis Pullen. Respondent had internet traffic automatically redirected from that site to his website – www.andrewhettinger.com.

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14. Respondent obtained the domain name – www.tpullen.com – after Travis Pullen’s public announcement that he intended to use that name for his campaign website. Respondent discovered that Mr. Pullen did not already own www.tpullen.com, and he chose to acquire that domain name.

15. Respondent obtained the domain name – www.tpullen.com – on or about March 29, 2016, and had internet traffic automatically redirected to his website until approximately May 12, 2016, when Respondent deactivated the website after receiving correspondence from the Commission regarding the potential Code violation.

16. Travis Pullen withdrew from the justice of the peace race, following a challenge to his nominating petitions. Respondent defeated Carl Seel in the August 30, 2016 primary election. Respondent had no opponent in the November 8, 2016 general election.

17. Respondent attended a portion of a training session entitled “Ethics Issues When Running for Judge,” on April 27, 2016, at the Maricopa County Elections Department, presented by George A. Riemer, Executive Director of the Commission on Judicial Conduct.

18. If Travis Pullen were to testify, he would state that he did not confront Respondent about his purchase of www.tpullen.com directly, but rather, retained counsel who raised the issue with Respondent. Additionally, Mr. Pullen would testify that in his opinion, the funds he expended on legal fees (two \$400.00 payments on May 20, 2016 and June 20, 2016, as reported in his campaign finance reports) could have been used on his campaign, which may have resulted in him obtaining the necessary signatures to be placed on the ballot.

Additional findings of fact are noted in the section below titled, “Commission Rule 19 Mitigating and Aggravating Factors.”

IV. DISCUSSION

A. Commission Rule 19 Mitigating and Aggravating Factors

Commission Rule 19, Rules of the Commission on Judicial Conduct, sets forth a number of factors to consider in assessing the appropriate sanction to impose. In considering the relevant mitigating and aggravating factors, the Commission reached the following findings:

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Mitigating Factors

1. The judge's experience and length of service on the bench. In 2016, Respondent was thirty years of age and licensed as an attorney for over two years. Respondent has served as a justice of the peace in Maricopa County, Arizona since January 2017, and continues to hold that position.

2. Whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct. The logo, without the word "elect" or "for," appeared on Respondent's Facebook page from approximately July 2015, when the page was created, until approximately May 12, 2016, when Respondent removed the logo after receiving correspondence from the Commission regarding the potential Code violation. Respondent immediately ceased use of www.tpullen.com on May 12, 2016. Respondent testified that after approximately May 12, 2016, and before placing his campaign signs, he added stickers with the word "VOTE" to each of his campaign signs. During his testimony, Respondent was contrite and candid. Upon reflection, he acknowledged that his actions could be seen as bringing his "integrity" into question.

3. Whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding. Respondent has no prior disciplinary history.

4. Whether the judge cooperated fully and honestly with the Commission in the proceeding. Respondent cooperated with the Commission.

Aggravating Factors

The Commission finds in aggravation:

1. The nature, extent, and frequency of the misconduct.

Respondent's Facebook page contained a small image, approximately the size of a business card or postcard, with a logo that stated "Andrew Hettinger Justice of the Peace." The logo did not contain the words "elect" prior to the candidate's name, or the word "for" in between the candidate's name and the position sought, as required by the Code. Respondent testified that he had skimmed over Canon 4 of the Code. Respondent also attended a portion of a training session entitled "Ethics Issues When Running for Judge," on April 27, 2016, at the Maricopa County Elections Department, presented by George A. Riemer, Executive Director of the Commission on Judicial Conduct. Respondent did receive a copy of the written materials from the session, and "looked over" part of the materials. Respondent testified that he initially did not

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believe that Rule 4.3(D) applied to him since he was running for “justice of the peace,” and the term “judge” is used in Rule 4.3(D).

Respondent’s campaign website www.andrewhettinger.com was acquired in July 2015. Travis Pullen announced in March 2016 that he intended to use www.tpullen.com as his campaign website. After Travis Pullen’s announcement, Respondent went on the internet to investigate the website disclosed by Travis Pullen. He found that Travis Pullen had not secured the domain name www.tpullen.com. With full knowledge of Travis Pullen’s intended use, Respondent secured the domain name for “\$25.00 or \$30.00.” After acquiring the domain name, Respondent opened a website, researched how to, and then redirected all hits on www.tpullen.com to www.andrewhettinger.com.

In addition to acquiring www.tpullen.com, Respondent testified that he acquired www.travispullen.com and www.pullenforjustice.com web addresses. He did not redirect internet traffic from the last two web addresses to www.andrewhettinger.com.

Respondent testified that he went online and tried to find similar information concerning his other opponent in the primary, Carl Seel. Respondent’s attempt to acquire any domain names related to Carl Seel was unsuccessful.

Respondent had acquired domain names involving the use of “Pullen” as early as December 2015 and did not cease his activity in that regard until after receiving the Commission’s letter in May 2016. Travis Pullen was out of the race sometime in June 2016.

Respondent testified that he was caught up in the campaign, therefore, his conduct in acquiring domain names and redirecting traffic to his webpage was an impulsive decision. Respondent’s efforts focused on both judicial opponents and were calculated to disadvantage them in the campaign. The totality of Respondent’s conduct is not consistent with constituting an impulsive decision; rather, it was a calculated strategic campaign plan.

2. Whether the conduct occurred in the judge’s official capacity or private life. As a judicial candidate, subject to the provisions of the Code, Respondent’s misconduct occurred in his official capacity.

3. The nature and extent to which the acts of misconduct injured other persons or respect for the judiciary. Respondent’s misconduct resulted in

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a negative impact on then judicial candidate Travis Pullen and has likely resulted in a negative impact on the public's respect for the judiciary.

B. Code Violations

The Commission finds that Respondent's conduct as a judicial candidate violated multiple rules in Canon 4 of the Code, as follows:

- Rule 4.2. states: (A) A judicial candidate shall: (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary; (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations; (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

- Rule 4.3 states: During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

- (A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;

...

- (D) Use the term "judge" when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words "elect" or "vote," in prominent lettering, before the judicial candidate's name or the word "for," in prominent lettering, between the name of the judicial candidate and the term "judge";

...

- (J) Falsely identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

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By stipulation, the following code violations were admitted by Respondent and are hereby adopted by the Commission:

By Respondent's conduct stated above in paragraphs 5-11 of the stipulated facts adopted by the Commission (facts regarding Respondent's logo), Respondent violated Rules 4.3 and 4.3(D) of the Code.

By Respondent's conduct stated in paragraphs 5-7 and 12-16 of the stipulated facts adopted by the Commission (facts regarding the redirection of internet traffic from www.tpullen.com), Respondent violated Rule 4.2(A)(1) of the Code.

The Commission also finds that Respondent's conduct in redirecting internet traffic from www.tpullen.com violated Rule 4.3 (A) and Rule 4.3(J).

As a judicial candidate, Respondent, with knowledge of his judicial opponent Travis Pullen's intent to use www.tpullen.com as his campaign website, obtained and registered www.tpullen.com, before Travis Pullen could register that domain name. Respondent researched how to redirect internet traffic, and then took the extra step to automatically direct visitors from that site to his website, www.andrewhettinger.com. Respondent testified that he also acquired www.travispullen.com and www.pullenforjustice.com. He did not redirect internet traffic from the last two web addresses to www.andrewhettinger.com. Respondent testified that he went online and tried to find similar information concerning his other opponent in the primary, Carl Seel. Respondent's attempt to acquire any domain names related to Carl Seel was unsuccessful. The commission finds Respondent's conduct to be deceptive and dishonest. Such conduct violated Rule 4.3(A) by posting, publishing, broadcasting, transmitting, circulating or distributing information concerning his judicial candidacy and his opponent that would be deceiving or misleading to a reasonable person. By engaging in this conduct, Respondent also failed to act in a manner that is consistent with the independence, integrity, and impartiality of the judiciary as required by Rule 4.2. Finally, the Commission finds Respondent's conduct violated Rule 4.3(J), as the misdirection of the website was a false identification of the source of a statement. Comment 1 to Rule 4.3 states, "a judicial candidate must be scrupulously accurate, fair and honest in all statements made by the candidate and his or her campaign committee."

V. CONCLUSION

After a formal hearing on May 15, 2017, the receipt and review of the pleadings, the stipulations, the testimony of the Respondent, and the arguments of Disciplinary Counsel and Respondent's Counsel:

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

Judge Andrew Hettinger is hereby publically reprimanded for his conduct as described above and pursuant to Commission Rule 17 (a).

The record in this case, consisting of the February 6, 2017 reprimand order, judge's notice of request for hearing, notice of institution of formal proceedings, statement of charges, the judge's response, case management order, joint prehearing statement, stipulated facts for formal hearing, stipulated code of judicial conduct violations, and this Order, shall be made public as required by Commission Rule 9(a).

The oral request made at the hearing by Disciplinary Counsel that Respondent pay the costs of fees of the Commission in preparing and conducting the formal hearing in this matter is hereby denied.

Commission members Gus Aragón, Jr., Margaret H. Downie, George H. Foster, Jr. and Art Hinshaw did not participate in the hearing and deliberations on this case.

Amended: May 31, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

A copy of this amended order was emailed to disciplinary counsel and to the judge's attorney on May 31, 2017.

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

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Judge: Andrew Hettinger

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CLARIFICATION ORDER

On May 30, 2017, the Commission on Judicial Conduct publically reprimanded Judge Andrew Hettinger finding that his conduct as a judicial candidate violated multiple rules in Canon 4 of the Code on Judicial Conduct, and issued an Order to the appropriate parties. After further review of that Order, a clerical error was noted on page 5, which misstated a date, in bold, as shown below:

Respondent had acquired domain names involving the use of "Pullen" as early as **September 2016** and did not cease his activity in that regard until after receiving the Commission's letter in May 2016. Travis Pullen was out of the race sometime in June 2016.

An amendment to the Order was made to include the corrected date, in bold, as shown below:

Respondent had acquired domain names involving the use of "Pullen" as early as **December 2015** and did not cease his activity in that regard until after receiving the Commission's letter in May 2016. Travis Pullen was out of the race sometime in June 2016.

Dated: May 31, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

A copy of this order and the amended order was emailed to disciplinary counsel and to the judge's attorney on May 31, 2017.

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