STATE OF KANSAS

BEFORE A HEARING PANEL FOR FORMAL JUDICIAL COMPLAINTS

Inquiry Concerning a Judicial Candidate)
)
Zoe F. Newton) Docket No. 1167

STIPULATION

FINDINGS OF FACT

1. In 2012, Zoe Newton ran for election to a judicial position on the Sedgwick County District Court.

2. Newton, without professional assistance, developed a campaign website located at www.zoenewton.com.

3. On August 14, 2012, Paul Zamorano, President of the Fraternal Order of Police, Wichita Lodge #5, transmitted an e-mail to Newton which stated: "Please read attached. You have my permission to place our logo and endorsement letter on your website, social media, etc. Best of luck to you!" The logo provided was the logo for the Fraternal Order of Police, Wichita, Kansas Lodge #5. Attached to the e-mail was a letter on Fraternal Order of Police, Wichita Lodge #5 letterhead which advised Newton that the author, Zamorano, was "pleased to inform you the Friends of the Fraternal Order of Police, Wichita Lodge #5 Political Action Committee (PAC) has endorsed your candidacy for Sedgwick County District Court Judge."

4. On the same day, August 14, 2012, after personally reviewing the e-mail, logo, and letter sent by Zamorano, Zoe Newton personally revised her website to reflect what she believed to be the endorsement she had received. Ms. Newton revised the home page of the

website to include the star-shaped logo provided by Mr. Zamorano, and she added the caption, "Proud to be endorsed by the FOP!" Ms. Newton, also revised the website to include an unredacted, digital copy of the August 14, 2012, letter which stated that the endorsement was being given by the "Friends of Fraternal Order of Police, Wichita Lodge #5 Political Action Committee (PAC)."

5. On October 29, 2012, eight days before the judicial election, Stephen Joseph, in his capacity as campaign chairman for the judicial candidate opposing Zoe Newton, submitted a complaint to the Commission on Judicial Qualifications regarding the "FOP" reference on Newton's campaign website. Mr. Joseph's complaint stated, correctly, that the endorsement received by Ms. Newton was not an endorsement from the "FOP" inasmuch as "FOP" is an abbreviation for the "Fraternal Order of Police," but was an endorsement from the Friends of Fraternal Order of Police, Wichita Lodge #5 Political Action Committee," a separate – albeit related – entity.

6. Newton received notification of the complaint from the Commission on Judicial Qualifications on November 2, 2012. In response to this notification, Newton acknowledged the contents of her website, but she denied knowingly or recklessly making any false or misleading statement, and she denied violating Rule 4.1 of Canon 4 of the Rules of the Supreme Court Relating to Judicial Conduct.

7. Receipt of the notification from the Commission on Judicial Qualifications was Ms. Newton's first express notice of the distinction between the organization known as the "Fraternal Order of Police" and the separate – albeit related – organization known as the "Friends of the Fraternal Order of Police," a political action committee. Newton promptly

checked with Mr. Zamorano who reconfirmed her authorization to use the star-shaped FOP logo on her website. Although Zamorano's authorization to use this logo was confirmed, Newton removed the logo from her website and substituted the phrase, "Proud to be endorsed by the Friends of the Fraternal Order of Police, Wichita Lodge #5 Political Action Committee (PAC)!" in place of the previous phrase "Proud to be endorsed by the FOP."

CONCLUSIONS OF LAW

1. Canon 4, Rule 4.1(A)(4) of the Rules of the Supreme Court Relating to Judicial Conduct provide:

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE *INDEPENDENCE, INTEGRITY,* OR *IMPARTIALITY* OF THE JUDICIARY.

RULE 4.1
Political and Campaign Activities of Judges and *Judicial Candidates* in General

(A) A judge or a *judicial candidate* shall not:

. . . .

(4) *knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

. . . .

2. Commentary [7] to Canon 4 explains that candidates must refrain from making statements "that omit facts necessary to make the communication considered as a whole not materially misleading." (2012 Kan. Ct. R. Annot. 750)

3. Judicial candidates are required to be scrupulously accurate in all campaign representations.

4. Candidates should exercise caution in all references to endorsements.

5. The "Scope" of the Kansas Code of Judicial Conduct at subsection [6] (2012 Kan. Ct. R. Annot. 715) provides:

> "Although the black letter of the Canons and Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Canons and Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others."

CONCLUSION

1. For sufficient evidence to be present to find a violation, clear and convincing evidence must exist. Rule 620 (2012 Kan. Ct. R. Annot. 768).

2. There is insufficient, clear and/or convincing evidence to conclude that Zoe Newton violated Canon 4, Rule 4.1(A)(4) of the Rules of the Supreme Court related to Judicial Conduct by "knowingly, or with reckless disregard for the truth" making "any false or misleading statement."

3. Ms. Newton is advised to be more careful in restating her endorsements, should she decide to run again for elected office. Judges and Judicial Candidates in Kansas are expected to uphold the highest standards of integrity and honesty in all matters, including elections to office.

4. Acceptance of this Stipulation by the undersigned and approval by a majority of the hearing panel constitutes final disposition of Docket No. 1167.

EDWARD G. COLLISTER, JR.
Examiner

ZOE P. NEWTON
Respondent

J. STEVEN PIGG
Attorney for Respondent

ACCEPTED by the Commission on Judicial Qualifications

FOR THE COMMISSION:

WILLIAM B. SWEARER, Chair Panel A
Commission on Judicial Qualifications