In the
Indiana Supreme Court

IN THE MATTER OF TAMMY R. DAVIS, CANDIDATE FOR JUDGE OF THE FRANKLIN CIRCUIT COURT	)))	Supreme Court Cause No. 24S00-1210-JD-610

PUBLISHED ORDER

This matter comes before the Court as a result of a judicial disciplinary action brought by the Indiana Commission on Judicial Qualifications ("Commission") against Respondent herein, Tammy R. Davis, candidate for judge of the Franklin Circuit Court, who ran for office during the November 2012 election. Article 7, section 4 of the Indiana Constitution and Indiana Admission and Discipline Rule 25 give the Indiana Supreme Court original jurisdiction over this matter.

On October 26, 2012, the Commission filed a seven-count Notice of the Institution of Formal Proceedings and Statement of Charges (hereinafter "Complaint") alleging, in sum, that Respondent made several false, misleading, and/or inappropriate statements during her campaign about the character and conduct of the incumbent, Judge J. Steven Cox, in violation of the Indiana Code of Judicial Conduct. Respondent filed her Answer on November 15, 2012.

On or about April 3, 2013, the Respondent and the Commission jointly tendered a "Statement of Circumstances and Conditional Agreement for Discipline" (hereinafter "Settlement Agreement") for the Court's consideration and acceptance. The Settlement Agreement sets forth certain facts that the parties agree constitute violations of Rule 4.2(A)(1) of the Code of Judicial Conduct.[1] For this behavior, which is summarized below, the Respondent and the Commission agree that Respondent should be barred from seeking judicial office for five (5) years and publicly reprimanded.

Background

On July 15, 2010, the Honorable J. Steven Cox, Judge of the Franklin Circuit Court, issued an order on the court's own motion modifying the sentence of convicted felon David Ison to allow him to serve the remainder of his prison sentence on probation. At that time, had Ison not been placed on probation, he would have been released from prison sometime between September 2010 and January 2011, depending upon how much credit time he would have received for attending a vocational class. In February 2011, Ison committed armed robbery in Ohio, and in September 2011, he murdered five people in Franklin County, Indiana.

In June 2012, Respondent declared her candidacy for judge of the Franklin Circuit Court, running against Judge Cox.

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[1] Rule 4.2(A)(1) states, "A judicial candidate in a partisan, nonpartisan, or retention public election shall . . . act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary . . . ." Ind. Judicial Conduct Rule 4.2(A)(1) (Thomson Reuters 2011).

Conduct Giving Rise to Discipline of Respondent

1. Statement that Judge Cox Ordered David Ison to Serve the Remainder of his Sentence on Probation Because of Cox's Friendship with Ison

On July 11, 2012, *The Brookville Democrat* published an article following a reporter's interview of Respondent about her candidacy. Based on comments Respondent made in the interview, the article reported Respondent as stating that Judge Cox had ordered Ison's prison sentence modified because Judge Cox and Ison had been "boyhood friends." In actuality, Judge Cox and Ison had not been boyhood friends, and Respondent did not believe they had been. She did not, however, request a retraction of the statement attributed to her or otherwise publicly correct the reporter's misstatement.

2. *Statement that Judge Cox "Worked for [Ison] for Free"*

From July 9 through July 25, 2012, Respondent authorized her campaign committee to post the following statement on her campaign website:

> Non-violent offenders with a demonstrated history of rehabilitation are routinely denied any relief of any kind, yet a man found guilty of more than twenty offenses as an adult, most of them violent felonies, had Steve Cox order his immediate release without a Motion from the Defendant. David Ison must have enjoyed avoiding attorney fees while Steve Cox worked for him for **free**. Well, that's not entirely accurate: Steve's work was paid for by the taxpayers, so it wasn't free for anyone but a convicted murderer.

(Settlement Agreement at 10, ¶ 36 (quoting Compl. Exh. G; emphasis in original).)

3. Misstatements about Ison's Release Date

In July and early August 2012, Respondent authorized campaign advertisements disseminated in local newspapers indicating that Ison would have been in prison in February 2011, rather than committing crimes in Ohio, if Judge Cox had not ordered Ison released in July 2010 on probation. On August 14, 2012, Commission staff informed Respondent that an ethical complaint had been lodged against her because of her campaign statements and advised her that it appeared she was incorrect in stating that Ison would still have been in prison had Judge Cox not issued his order permitting Ison to serve the remainder of his sentence on probation. Commission staff also provided Respondent with a letter written by the Department of Correction's General Counsel indicating that Ison would have been released in September 2010 (more than four months before Ison committed his Ohio crimes) had Ison not been released on probation in July 2010. On August 27, 2012, the Commission asked Respondent to make a public retraction of the previously-disseminated inaccurate statements about the date by which Ison would have been released from prison had Judge Cox not modified his remaining sentence to probation.

Rather than complying with the Commission's request, from late August through late October 2012, Respondent continued to post information on her campaign website implying that Ison would have been in jail and could not have committed the Ohio crimes if Judge Cox had not issued his July 15, 2010 sentence modification order. The Respondent and the Commission agree

that by posting such misinformation on her website after she had been made aware of its inaccuracy, Respondent left her website visitors with the incorrect impression that Ison could not have committed his crimes but for Judge Cox's conduct.

Conclusion

Having considered the parties' Settlement Agreement and being duly advised, the Court ACCEPTS the Settlement Agreement and DIRECTS as follows:

(a) Counts 1, 4 and 7 of the Commission's Complaint are DISMISSED per the parties' agreement;

(b) The Commission's de facto request for leave to amend its Complaint by replacing the Complaint's original "Count 2" with the document entitled "Amended Count 2" (attached as Exhibit A to the Settlement Agreement) is GRANTED; and

(c) Respondent is hereby BARRED FROM SEEKING JUDICIAL OFFICE for five (5) years from the date of this order and is hereby PUBLICLY REPRIMANDED for the conduct described above.

This terminates the disciplinary proceedings relating to the circumstances giving rise to this cause. The costs of this proceeding are assessed against Respondent.

The Clerk is directed to provide a copy of this order to Respondent and to all counsel of record. The Clerk also directed to post this order to the Court's website, and Thomson/Reuters is directed to publish this order in the bound volumes of this Court's decisions.

Done at Indianapolis, Indiana, on May 7, 2013.

Brent E. Dickson
Chief Justice of Indiana

All Justices concur.