



MDJCCC Maryland Judicial Campaign Conduct Committee,
Inc.

Report of the Maryland Judicial Campaign Conduct Committee

Elections 2008

George Beall & Stephen H. Sachs
Committee Co-Chairs

MDJCCC
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Members of the Committee

Co-Chairs

George Beall

Partner, Hogan & Hartson; U.S. Attorney for the District of Maryland (1970-1975); resident of Baltimore County.

Stephen H. Sachs

Of Counsel, Wilmer, Cutler, Pickering, Hale and Dorr; U.S. Attorney for the District of Maryland (1967-1970); Maryland Attorney General (1979-1987); resident of Baltimore City.

Reporter

Sherrilyn A. Ifill

Professor of Law, University of Maryland School of Law; member, National Ad Hoc Advisory Committee on Judicial Campaign Conduct; resident of Baltimore City.

Members

Marcellus Alexander, Jr.

Executive Vice President, National Association of Broadcasters' (NAB) Television Department; former General Manager, WJZ-TV; resident of Montgomery County.

Rebecca Saybolt Bainum

Managing Director, Clinical Law Program, University of Maryland School of Law; Staff Associate, Maryland Judicial Campaign Conduct Committee (2006 – 2007); Research Director and Legal Projects Manager, The Women's Law Center of Maryland (2001-2006), Legal Counsel, Massachusetts State Senate (1995-1997); resident of Baltimore City.

P. Tyson Bennett

Managing partner, Reese and Carney, LLP (Annapolis); Adjunct Professor (School Law and Disability Law), Johns Hopkins University; resident of Anne Arundel County.

Gilbert Holmes

Professor, University of Baltimore School of Law; former Dean, University of Baltimore School of Law (2001 – 2007); former faculty member, Texas Wesleyan University School of Law, Southern Methodist Law School, and Seton Hall University Law School; resident of Howard County.

Harry R. Hughes

Governor of Maryland (1979– 1987); Maryland Senate (1959-1970); Maryland House of Delegates (1955-1959); resident of Caroline County.

Donald Hutchinson

Interim President and CEO, Maryland Zoo in Baltimore; former President and CEO, SunTrust Bank, Maryland; former President, Greater Baltimore Committee; County Executive, Baltimore County (1978-1986); Maryland State Senate (1974-1978); Maryland House of Delegates (1969-1974); resident of Baltimore County.

Christopher Kehoe

Partner, Ewing, Dietz, Fountain & Kehoe (Easton); Town Attorney, Town of Easton; resident of Talbot County.

Helen Koss¹

Maryland House of Delegates (1971– 1987); President, League of Women Voters of Maryland (1963-1967); resident of Montgomery County.

Mark G. Loeb

Rabbi, Beth El Congregation in Baltimore; Past Chair, Board of Trustees, Baltimore Hebrew University (1999-2002); resident of Baltimore County.

Eugene M. Lerner

Associate Judge, Anne Arundel County Circuit Court, 5th Judicial Circuit, (1979-2001); resident of Anne Arundel County.

C. James Lowthers

President, United Food and Commercial Workers Union, Local 400 (headquarters- Prince George’s County); resident of Anne Arundel County.

Timothy Maloney

Partner, Joseph, Greenwald & Laake (Greenbelt); Member, Maryland House of Delegates (1979-1995) representing Prince George’s County; resident of Montgomery County.

A. Dwight Pettit

Principal, A. Dwight Pettit, P.A.; Member, Board of Regents of the University System of Maryland; President, Monumental Bar Association (1976-1978); resident of Baltimore City.

Linda Pierson

President, League of Women Voters of Maryland; member, Attorney Grievance Commission (2001-present); resident of Baltimore City.

Roger Perkins

Principal, the Law Offices of Roger A. Perkins (Annapolis); Assistant City Attorney, City of Annapolis (1980 – 1982); resident of Anne Arundel County.

Donald B. Robertson

¹ Regrettably, Helen Koss passed away on September 28, 2008. She was a splendid colleague. Her many contributions to the work of the Committee were unfailingly constructive and she will be sorely missed.

Partner, Ross, Marsh & Foster; Maryland House of Delegates (1970-1989), Speaker Pro Tem (1987-1989), Majority Leader (1979-1987); resident of Montgomery County.

Carmen Shepard

Counsel, Buc & Beardsley (Washington, D.C.); Deputy Attorney General, Office of the Maryland Attorney General (1996-2002); resident of Washington, D.C.

Stuart O. Simms

Partner, Brown, Goldstein, and Levy; Secretary Maryland Department of Public Safety and Correctional Services (1997 – 2003); Secretary, Maryland Department of Juvenile Services (1995 – 1997); Baltimore State’s Attorney (1987 – 1995); resident of Baltimore City.

Kenneth Thompson

Partner, DLA Piper Rudnick Gray Carey; Chairman, Judicial Nominating Commission for Baltimore City; resident of Baltimore City.

Christopher West

Principal, Semmes, Bowen & Semmes; Former counsel, Republican Party of Maryland; resident of Baltimore County.

Staff Attorney

Elizabeth Hirshfield Moss

Senior Staff Analyst, Department of Legislative Services, Maryland General Assembly (2003 – 2007); Associate, Weinberg & Schwartz (2000 – 2003); resident of Howard County.

Background

In his 2005 state of the judiciary address, Chief Judge Robert M. Bell of the Court of Appeals of Maryland, acting on the recommendations of the Judicial Ethics Committee and the Public Trust and Confidence Committee, called for the formation of a citizens' committee to study and monitor the conduct of contested judicial elections in Maryland. Chief Judge Bell asked former United States Attorney George Beall and former United States Attorney and Maryland Attorney General Stephen H. Sachs to co-chair the committee and invited Professor Sherrilyn A. Ifill of the University of Maryland School of Law, who has studied and written extensively on judicial elections, to serve as a committee member and its reporter.

Messrs. Beall and Sachs and Professor Ifill recruited the other members of the Maryland Judicial Campaign Conduct Committee (MDJCCC), a diverse, representative and bi-partisan group of Marylanders committed to maintaining respect for the uniqueness of the judicial office, and to promoting civility in the conduct of contested elections for Maryland's circuit court judgeships.

During the 2006 election, in Maryland's eight judicial circuits, there were thirty-five candidates (including incumbents and challengers) for election to the Circuit Court. Twenty-five of those candidates – 71 percent – signed the Candidate Acknowledgement Form, agreed to abide by the MDJCCC standards. MDJCCC played an important role of supporting and promoting respect for judicial officers. It raised awareness, provided a forum, elevated discussions and even changed behavior.

MDJCCC is a volunteer organization. Its members have broad experience in law, business, politics, journalism, government service and other civic activities. They appreciate the uniqueness of the judicial office and the need to preserve its reputation for fairness and impartiality. MDJCCC's commitment is to promote public education about the role of judges, and to improve the level of public discourse in judicial campaigns.

The Maryland Judicial Campaign Conduct Committee (MDJCCC) is dedicated to promoting impartiality and dignity in Maryland's contested judicial elections. This report outlines the activities of the Committee and an analysis of its impact during the 2008 electoral season.

Standards

MDJCCC formulated Standards for campaign conduct and applied them during the 2006 election season. These standards were continued during the 2008 election season. The Committee asked that all judicial candidates for the Circuit Court -- incumbents and challengers alike – adhere to the Standards during their campaigns. The Standards adopted by the Committee are printed in the Handbook and are as follows:

STANDARD I. Maryland's Canons and Rules. A candidate for judicial office shall be familiar with, and subscribe to, the Maryland

Code of Judicial Conduct (in particular Canons 3 and 5) and the Maryland Rules of Professional Conduct (in particular Rule 8.2).

STANDARD II. Campaign Communications - Impartiality. A candidate for judicial office shall not make any statement concerning his or her views that might reasonably be understood to compromise his or her impartiality and objectivity with respect to a case that may come before the court.

STANDARD III. Campaign Communications – Truthfulness and Dignity. A candidate for judicial office shall not knowingly make a false or misleading representation about his or her own qualifications, record or experience, or those of any other judicial candidate. A candidate shall communicate in a dignified manner and shall refrain from making inflammatory, sensational or abusive statements. A candidate shall not authorize or encourage such communication by others and shall promptly and publicly disavow such communication should it be made by individuals or organizations that act in cooperation or coordination with the candidate’s campaign.

STANDARD IV. Campaign Communications - Misrepresentation of Title. A candidate for judicial office shall not use the title of an office not currently held by the candidate in a manner that implies that the candidate currently holds the office.

STANDARD V. Campaign Communications – Appeals to Bias and Prejudice. Campaign communications shall not suggest that an opponent is not qualified or competent to serve as a judge because of the opponent’s race, sex, religion, national origin, sexual orientation or socioeconomic status, nor shall campaign communications invoke invidious stereotypes to suggest that age or disability, in and of themselves, constitutes a lack of competence or qualification.

STANDARD VI. Campaign Communications –Visual Materials. A candidate must take particular care to insure that visual campaign materials conform to the foregoing Standards and comport with the dignity and integrity of judicial office.

STANDARD VII. Financial Contributions. A judicial candidate must not only abide by Maryland’s election laws governing campaign fundraising but must take all reasonable steps to insure that campaign fundraising does not undercut the dignity or impartiality of judicial office.

The Committee’s Standards for campaign conduct were compiled in a booklet entitled Handbook for Contested Judicial Elections 2008. In addition to the Standards, the Handbook includes a history of MDJCCC and its creation and a description of the committee members. It also includes a candidate acknowledgement form that restates the Standards and provides a place for judicial candidates to indicate their willingness to abide by the Standards during the election. The full text of the Standards is posted on the Committee’s website.²

² With generous assistance from Theresa Thomas and Thomas Wilhelmy from the Court Information Office, MDJCCC continued the website that had been created in 2006: www.mdjccc.org. The site contains

Complaint Protocol

During the 2008 election season, the Committee continued the internal protocol used during the 2006 election season for considering alleged violations of the Standards for the Conduct of Contested Judicial Elections:

1. *Complaints alleging violations of MDJCCC's Standards may be received from judicial candidates or members of the public.*
2. *Complaints must be in writing using the form available on MDJCCC's website or from the committee, accompanied by any and all supporting material, signed by the complainant and mailed or faxed to the committee.*
3. *Complaints may also be received in person, by phone or email on the Committee's website (www.mdjccc.org). In that event the recipient of the complaint shall inform the complainant to sign and submit the complaint as described above but shall also immediately bring the complaint to the attention of one of the Co-chairs, who shall proceed as described below. The Co-chairs may designate these functions to Committee members, as necessary.*
4. *If, after receiving a complaint, it is the judgment of the Co-Chairs in consultation with such Committee members as they deem necessary, that there is no adequate basis for further inquiry, the complainant shall be promptly notified that no further action shall be taken. The Co-Chairs shall promptly inform the full Committee of this determination.*
5. *If the Co-Chairs determine that there is an adequate basis for further inquiry, the Co-Chairs shall promptly notify the full Committee of the substance of the complaint, and shall designate one or more Committee members to conduct such further inquiry. The Co-Chairs or their designee on the Committee may request additional information from the complainant but, in any case, shall notify the respondent of the complaint and request a prompt written response.*
6. *Upon completion of the inquiry, the Committee member(s) assigned to a particular complaint shall report findings to the Co-Chair and the full Committee.*
7. *The Committee shall confer promptly to discuss the complaint and findings.*
Committee members who are unable to attend in person may consult by conference call and/or e-mail.

the complete text of the Committee's Handbook for Judicial Elections 2008, as well as detailed information regarding candidates for judicial office. The "Candidates 2008" page of the website provides a listing of all of the candidates who filed for election to the various circuit courts in Maryland and identifies which of those candidates agreed to abide by the MDJCCC Standards. On the "Complaints" page, the Committee provides an accounting of all complaints filed along with links to the Committee's decisions. The information from the 2006 election, including the final report, is posted as well. The website also provides useful links for state and national resources about judicial elections and campaign conduct committees.

- 8. *A finding that the conduct in question violates the Standards requires a vote of a majority of the Committee. Committee members may abstain from voting for any reason.*
- 9. *The decision of the Committee shall be communicated promptly to the complainant and the respondent. A written decision shall be provided.*
- 10. *The deliberations of the Committee shall be confidential.*
- 11. *The complaint and request for investigation, the candidate’s response (if any), and the findings and action of the Committee, however, shall be available to the public and may be disclosed to any persons or entities, including the media.*
- 12. *When deemed appropriate by a majority of the entire Committee, complaints may be referred to the Judicial Ethics Committee or to the Attorney Grievance Commission.*

Candidates

All individuals who filed with the State Board of Elections to be a candidate for Circuit Court judge in any of Maryland’s eight judicial circuits received a letter from MDJCCC inviting voluntary compliance with the committee Standards. The letters included a copy of the Committee’s Handbook for Judicial Elections 2008 and requested that the candidate sign a “Candidate Acknowledgement Form” if he or she agreed to abide by the Standards. The letter also informed the candidates that the Committee would publicly identify those candidates who agreed to adhere to the Standards. As new candidates filed certifications of candidacy with the State Board of Elections, MDJCCC sent the Committee’s Handbook and letter of invitation to sign onto the Standards. The website maintained an up-to-date listing of all filed candidates with an indication of whether each candidate had signed the Candidate Acknowledgement Form.

In Maryland’s eight judicial circuits, there were twenty-eight candidates (including incumbents and challengers) for election to the Circuit Court. Fifteen of those candidates – 53 percent – signed the Candidate Acknowledgement Form, agreeing to abide by the MDJCCC standards. Of those who agreed to the Standards, 100 percent were incumbents.

The table below reveals the specifics by jurisdiction:

| Candidates who filed for election to judicial office 2008 | Candidate status: incumbent or challenger | Candidates who signed the 2008 Candidate Acknowledgement Form |
|---|--|--|
| First Judicial Circuit (Dorchester, Somerset, Wicomico, and Worcester) | | |
| Daniel M. Long | Incumbent | |
| Second Judicial Circuit (Caroline, Cecil, Kent, Queen Anne's and Talbot) | | |

| | | |
|---|------------|---------------------------|
| Broughton “Bo” Earnest | Incumbent | Broughton “Bo” Earnest |
| Philip Carey Foster | Challenger | |
| Michael F. O’Connor | Challenger | |
| J. Frederick Price | Incumbent | J. Frederick Price |
| Third Judicial Circuit (Baltimore and Harford) | | |
| H. Edward Andrews III | Challenger | |
| Thomas J. Bollinger, Sr. | Incumbent | |
| Angela M. Eaves | Incumbent | Angela M. Eaves |
| Steven J. Scheinin | Challenger | |
| Pat Stringer | Incumbent | Pat Stringer |
| Charles F. Wagner | Challenger | |
| Fourth Judicial Circuit (Allegany, Garrett, and Washington) | | |
| No candidates | | |
| Fifth Judicial Circuit (Anne Arundel, Carroll, and Howard) | | |
| Tim McCrone | Incumbent | Tim McCrone |
| Michael Wachs | Incumbent | |
| Sixth Judicial Circuit (Frederick and Montgomery) | | |
| Robert Alan Greenberg | Incumbent | Robert Alan Greenberg |
| Mary Beth McCormick | Incumbent | Mary Beth McCormick |
| Seventh Judicial Circuit (Calvert, Charles, Prince George's, and St. Mary's) | | |
| Andre Michael Chapdelaine | Incumbent | Andre Michael Chapdelaine |
| Larnzell Martin, Jr. | Incumbent | |
| Crystal Dixon Mittelstaedt | Incumbent | |
| Albert W. Northrop | Incumbent | |
| Nicholas Elias Rattal | Incumbent | |
| Eighth Judicial Circuit (Baltimore City) | | |
| Charles G. Bernstein | Incumbent | Charles G. Bernstein |
| Emanuel Brown | Incumbent | |
| Yvette Michelle Bryant | Incumbent | Yvette Michelle Bryant |
| Timothy James Doory | Incumbent | Timothy James Doory |
| John Addison Howard | Incumbent | John Addison Howard |
| Robert B. Kershaw | Incumbent | Robert B. Kershaw |
| George Levi Russell, III | Incumbent | George Levi Russell, III |
| Pamela Janice White | Incumbent | Pamela Janice White |

As shown in the above table, there were only two contested elections during the 2008 primary – one in Harford County and one in Talbot County. The incumbents won both of

these elections and were not challenged in the general election. As a result, there were no contested elections during the 2008 general election season.

Complaint

MDJCCC received only one complaint during the 2008 campaign season. This complaint related to Standard IV: Campaign Communications - Misrepresentation of Title. As detailed in the Committee’s January 25 decision, which can be found in the Appendix, the complaint alleged that Mr. O’Connor’s signage improperly suggested that he was a judge when he was not, in fact, an incumbent judicial officer.

Standard IV of MDJCCC’s Standards for Contested Judicial Elections, states that “[a] candidate for judicial office shall not use the title of an office not currently held by the candidate in a manner that implies that the candidate currently holds office.” The Commentary to the Standard specifically states that “[a] candidate for judicial office who is not currently a judge may not use the title “Judge” in such a way as to suggest that the candidate is a judge.” The complaint filed against Mr. O’Connor alleged that his signs contravened Standard IV by suggesting that he was a judge. The Committee noted that Mr. O’Connor had not signed the candidate agreement form, and thus had not agreed to comply with the voluntary Standards adopted by MDJCCC.

In accordance with the Committee’s complaint protocol, after receiving the complaint, the co-chairs appointed a panel of Committee members to review the materials and to conduct an inquiry. The inquiry panel reviewed the complaint and accompanying documents. The inquiry panel also contacted the complainant to verify his complaint and to request additional information or clarification of information received. Mr. O’Connor was provided with a copy of the complaint and all materials submitted by the complainant. He was asked to respond promptly to the allegations and to provide any documents that he deemed relevant to the Committee’s review of the complaint. On January 11, 2008, the Committee received a response to the complaint on behalf of Mr. O’Connor and was also provided a copy of the sign. The inquiry panel reviewed Mr. O’Connor’s submission and made a recommendation to the full Committee.

Each member of the Committee received all of the materials submitted by the complainant, as well as the response of Mr. O’Connor, along with the inquiry panel’s report and recommendation. After deliberation, the Committee voted and concluded that there was insufficient evidence to find that Mr. O’Connor had violated Standard IV.³

However, in concluding its decision, the Committee took the opportunity to provide further commentary on the higher standard of conduct that is essential from judicial candidates: “It is the expectation of the Committee that candidates in future judicial elections may rely upon decisions of this Committee for guidance on campaign practices

³ It should be noted that Christopher Kehoe, Roger Perkins, and Kenneth Thompson recused themselves from consideration of the O’Connor complaint.

in judicial elections, for example for instructive information about the misleading potential of artistic choices made for campaign materials. We have been clear in a previous decision that the juxtaposition of the candidate's name and the office sought is important. The Commentary to the Standards printed in the Committee's Handbook for Judicial Elections are not intended to include examples of all campaign activities, which the Committee could find violate the Standards. Inasmuch as the Committee has been called upon in several instances to review the misleading potential of campaign materials, future candidates should be reminded of their special obligation to be precise and accurate in their communications with the voters and that judicial elections are different and must be conducted with a level of care and diligence that protects the bench from the appearance of impropriety and that protects the integrity of the bench."

Conclusion

The Maryland Judicial Campaign Conduct Committee can continue to be considered a success. As initially stated in the 2006 final report, it is important to recognize that MDJCCC's biggest influence may be its deterrent effect. The Committee only received one complaint about judicial conduct and that conduct was not found to violate the Standards. Our presence served as a constant reminder that judicial candidates can and should be held to a higher standard of conduct than aspirants for other elected offices. As a result, MDJCCC played an important role of supporting and promoting respect for judicial officers.

The Committee recommends that MDJCCC be continued in preparation for the 2010 elections.

Appendix

MDJCCC Decision: Michael O'Connor



MDJCCC Maryland Judicial Campaign Conduct Committee, Inc.

Co-Chairs

George Beall
Stephen H. Sachs

Reporter

Sherrilyn Ifill

Members

Marcellus Alexander, Jr.
Rebecca Saybolt Bainum
P. Tyson Bennett
Gilbert Holmes
Harry R. Hughes
Donald Hutchinson
Christopher Kehoe
Helen Koss
Mark. G. Loeb
Eugene M. Lerner
C. James Lowthers
Timothy Maloney
A. Dwight Pettit
Linda Pierson
Roger Perkins
Donald B. Robertson
Carmen Shepard
Stuart O. Simms
Kenneth Thompson
Christopher West

Staff Attorney

Elizabeth H. Moss

**DECISION REGARDING COMPLAINT
ABOUT THE CAMPAIGN CONDUCT OF
MICHAEL O’CONNOR, CANDIDATE FOR
TALBOT COUNTY CIRCUIT COURT**

January 25, 2008

A complaint filed with the Maryland Judicial Campaign Conduct Committee alleges that the campaign of Michael O’Connor misled prospective voters because the campaign signs appeared to indicate that Mr. O’Connor was already a judge.

Although the Committee regards the question as close, a finding that MDJCC’s Standards were violated was not supported by a majority of the Committee.¹

¹ It should be noted that Christopher Kehoe, Roger Perkins, and Kenneth Thompson recused themselves from consideration of this complaint.

MARYLAND JUDICIAL CAMPAIGN CONDUCT COMMITTEE, INC.
DECISION REGARDING COMPLAINT ABOUT CANDIDATE MICHAEL O'CONNOR
JANUARY 25, 2008

A. BACKGROUND

The Maryland Judicial Campaign Conduct Committee is a diverse, representative, bi-partisan group of Marylanders, all volunteers, committed to promoting and maintaining respect for the uniqueness of the judicial function. It was formed at the suggestion of Chief Judge Robert A. Bell of the Court of Appeals of Maryland. Its co-chairs are former United States Attorney George Beall and former United States Attorney and Maryland Attorney General Stephen H. Sachs. Its Reporter is Professor Sherrilyn A. Ifill of the University of Maryland School of Law. Maryland is one of twelve states that have created such committees.

MDJCCC has established Standards for the Conduct of Judicial Elections. It has invited all judicial candidates --- incumbents and challengers alike--- to agree to abide by those Standards in their campaigns. It will receive and attempt to resolve complaints alleging violations of those Standards. It has no official power to censure or sanction violations of those Standards. MDJCCC's commitment is to promote public education about the role of judges and to assist voters in obtaining accurate and relevant information about judicial contests.

Several key propositions have guided MDJCCC's work: Judicial elections are different from other political contests. Candidates for judicial office should promote the impartial performance of their judicial duties according to the law and to the facts that are developed in court. Respect for the rule of law --- of which judges should be exemplars--- requires that judicial candidates conduct themselves with the dignity and integrity that the public has a right to expect of those who hold, or aspire to hold, judicial office.²

On January 4, 2008 the Maryland Judicial Campaign Conduct Committee received a complaint regarding the campaign conduct of Michael O'Connor, candidate for Circuit Court Judge in Talbot County. The complaint was filed by Philip Cohan and alleges that Mr. O'Connor's conduct contravened MDJCCC Standards by suggesting in some way that he is currently a judge. A copy of the complaint can be found at Attachment A.

The complaint implicates Standard IV of the MDJCCC's Standards for Contested Judicial Elections. Standard IV states "[a] candidate for judicial office shall not use the title of an office not currently held by the candidate in a manner that implies that the candidate currently holds office." The Commentary to the Standard specifically states that "[a] candidate for judicial

² A more detailed statement of the background, purpose, program and procedures of MDJCCC is set forth in its *Handbook for Judicial Elections 2008* and on its website at www.mdjccc.org

MARYLAND JUDICIAL CAMPAIGN CONDUCT COMMITTEE, INC.
DECISION REGARDING COMPLAINT ABOUT CANDIDATE MICHAEL O'CONNOR
JANUARY 25, 2008

office who is not currently a judge may not use the title "Judge" in such a way as to suggest that the candidate is a judge."

B. THE COMMITTEE'S INQUIRY

The Committee Co-Chairs Beall and Sachs appointed committee member Linda Pierson and asked MDJCCC Staff Attorney, Elizabeth H. Moss, to review the materials and conduct an inquiry on their behalf. The inquiry panel reviewed the complaint and accompanying documents. Ms. Moss also contacted the complainant to verify receipt of the complaint and to request additional information or clarification of information received.

On January 5, 2008 copies of the complaint were sent via overnight mail to Mr. O'Connor's home address and by e-mail to his work e-mail address. The MDJCCC requested a response no later than January 14, 2008.

On January 7, Mrs. O'Connor contacted Elizabeth Moss and informed her that she was in receipt of the complaint against her husband and provided assurances that the Committee would receive a response before the requested due date. On January 11, the MDJCCC received a 1-page written response from Mr. John Hall on behalf of Mr. O'Connor. The Hall letter may be found at Attachment B. Ms. Moss spoke with Mr. Hall by phone on January 11 to acknowledge receipt of the response and to request a campaign sign. Mr. Hall agreed to provide the Committee with a sign, which was received on January 12.

C. DISCUSSION AND DECISION WITH RESPECT TO THE ALLEGATION

Allegation in Complaint: The Complaint alleges that Mr. O'Connor "has erected signs that misleadingly suggest that he is currently a judge although he is currently a public defender." A photograph was attached to the complaint, and an additional photograph was provided to the Committee. A copy of the additional photograph can be found at Attachment C.

MARYLAND JUDICIAL CAMPAIGN CONDUCT COMMITTEE, INC.
DECISION REGARDING COMPLAINT ABOUT CANDIDATE MICHAEL O'CONNOR
JANUARY 25, 2008

Evidence obtained through inquiry by the Committee: The Committee has obtained one of the campaign signs in question. It is twenty-six inches long by sixteen inches high; the lettering of the candidate's name is five inches, the lettering of the word JUDGE is three inches, and the each letter in the word "for" is three-fourths of one inch. The total length of the word "for" is 2 inches. A Committee member reports that he "did a slow drive by" and that the lettering of the word "for" is visible only as a blur.

Evidence provided by Mr. O'Connor: Mr. Hall's letter states in relevant part, "when viewed in color, the sign visually consists of a top portion, with blue lettering on a white background containing the candidate's name, and a bottom portion, consisting of white lettering on a blue background identifying the office sought, and including a graphic image of the scales of justice. The size of the type used in the top portion bearing the candidate's name is larger than the lettering used in the bottom portion which identifies the office sought." Mr. Hall also stated that if "Mr. O'Connor had sought to create the impression that he was currently serving as judge, he would have placed the word "judge" before his own name, as Judge Earnest has on his signs."

Decision of the Committee: The Committee considered the allegations in the complaint, the campaign sign itself, and the response to the complaint on behalf of Mr. O'Connor by John F. Hall. As indicated above, the Committee regards this case as a close one. A finding that MDJCCC's Standard IV was violated was not supported by a majority of the Committee.

The Committee wishes to add to its decision the following important considerations that were reflected in its deliberations:

1. The Committee's decision should not be understood as holding that every campaign sign of a challenger in a judicial election does not violate Standard IV merely because

MARYLAND JUDICIAL CAMPAIGN CONDUCT COMMITTEE, INC.
DECISION REGARDING COMPLAINT ABOUT CANDIDATE MICHAEL O'CONNOR
JANUARY 25, 2008

the candidate's name precedes the office sought. The Committee's decision is limited to the specific facts and circumstances before the Committee in this case.

2. The examples mentioned in the Commentary to Standard IV printed in the MDJCCC Handbook for Judicial Elections are not intended to exhaust the circumstances in which MDJCCC would find a violation of the Standard. As the Commentary points out, "There are various ways, some of them quite subtle, in which ... a misleading impression can be communicated." The sole test is whether a communication is likely to mislead.

3. The O'Connor campaign sign in question would have been clearly proper --- and the issue of whether it was misleading not even presented --- if the word "for" had been clearly readable on the sign.

4. The Committee understands the explanation of Mr. O'Connor that the juxtaposition of name and position, without more, are common in political contests and that the word "for", in such circumstances, is superfluous. As the Committee has frequently observed in the past, however, the standards that are acceptable in non-judicial contests are not necessarily acceptable in judicial contests. Judicial candidates are generally not as well known as candidates for political office and the danger of voter confusion is greater. Candidates for judicial office, moreover, should be held to a higher standard of accuracy and clarity. Judicial elections, we have consistently pointed out, are different. They must be conducted with a level of care and diligence that protects the bench from even the appearance of impropriety and promotes its integrity.

MARYLAND JUDICIAL CAMPAIGN CONDUCT COMMITTEE, INC.
DECISION REGARDING COMPLAINT ABOUT CANDIDATE MICHAEL O'CONNOR
JANUARY 25, 2008

For the Maryland Judicial Campaign Conduct Committee,

/s

George Beall, Co-Chair

/s

Stephen H. Sachs, Co-Chair

January 25, 2008

This decision is available on the website of the Maryland Judicial Campaign Conduct Committee at www.mdjccc.org. Copies have been furnished to Mr. Philip Cohan and to Mr. John Hall, on behalf of Mr. Michael O'Connor.

ATTACHMENT A

JUDICIAL ELECTION COMPLAINT FORM

Maryland Judicial Campaign Conduct Committee
P.O. Box 1483
Columbia, MD 21044

Date of Complaint: January 5, 2008

Name of Individual Making Complaint: Philip Cohan

Complete Address: 5704 Irish Creek Road, Royal Oak, MD 21662

Phone (day) 202-725-5190 Phone(evening) 410-745-9051

Phone (mobile) 202-725-5190

Name of Judge/Judicial Candidate Who is the Subject of this Complaint:

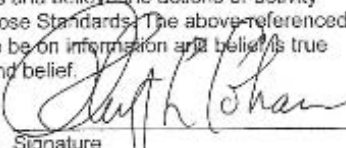
Michael O'Conner

Date Incident Complained of Occurred: Ongoing

NATURE OF COMPLAINT: (Please be specific and attach pertinent materials as necessary. If your complaint involves television commercials, radio broadcasts, Internet sites, etc., please attach a copy of the videotape or audiotape, if available. Attach additional sheets, as needed.)

The candidate has erected signs that misleadingly suggest that he is currently a judge although he is currently a public defender. I believe that this is a violation of the MDJCCC's standard IV. A photograph of one of the signs in question is attached.

I have read the Maryland Judicial Campaign Conduct Committee's Standards for the Conduct of Contested Judicial Elections and believe the actions or activity described above constitute a violation of those Standards. The above-referenced Complaint is true and correct, or if stated to be on information and belief, is true and correct to the best of my information and belief.


Signature



ATTACHMENT B

O'CONNOR FOR JUDGE COMMITTEE

P. O. Box 2082
Easton, Maryland 21601
January 8, 2008

Elizabeth H. Moss, Esq.
Staff Attorney
Maryland Judicial Campaign Conduct Committee, Inc.
P. O. Box 1483
Columbia, MD 21044

Re: Talbot County Circuit Court
February 12, 2008
Michael F. O'Connor, candidate

Dear Ms. Moss:

I write to you on behalf of Michael F. O'Connor to respond to the baseless allegation that Mr. O'Connor is misrepresenting himself as the current judge.

When viewed in color, the sign visually consists of a top portion, with blue lettering on a white background containing the candidate's name, and a bottom portion, consisting of white lettering on a blue background identifying the office sought and including a graphic image of the scales of justice. The size of the type used in the top portion bearing the candidate's name is larger than the lettering used in the bottom portion which identifies the office sought.

If Mr. O'Connor had sought to create the impression that he was currently serving as judge, he would have placed the word "judge" before his own name, as Judge Earnest has done on his signs. And, as Judge Earnest has done with his signs, the size of the letter used for the word "judge" would have been identical to the size of the candidate's name, thus signifying that the word Judge indicates the position held.

Given the visual impression gained from viewing the sign (that Michael O'Connor is seeking the office of judge) it is not necessary to have included the word "for." Many political signs do not. Because the word "for" is superfluous, its size is irrelevant.

Americans read from the top to the bottom. When the sign is so read, no misrepresentation is possible. The complaint should be dismissed.

Very truly your,

John F. Hall

Please reply to: 513 S. Washington Street, Easton, MD 21601 (410) 822-2119
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ATTACHMENT C

