

FEB 17 2017

COMMISSION ON
JUDICIAL QUALIFICATIONS

STATE OF KANSAS

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

Inquiry Concerning
A Judge

Docket No. 1301

ORDER

Members of the Commission present include: Hon. Mary B. Thrower, Chair; Hon. Brenda M. Cameron, Vice-Chair; Nancy S. Anstaett; Norman R. Kelly; and Rep. Valdenia C. Winn.

FINDINGS OF FACT

There is no dispute regarding the facts set out below:

1. Timothy H. Henderson, Respondent, was, at the time of the filing of the complaint, a District Judge in the 18th Judicial District and running for re-election in the 2016 election year.
2. The Commission received a complaint that Respondent used an outdated statement by another judge in support of Respondent's re-election campaign without obtaining permission.
 - A. On February 6, 2014, Michael J. Hoelscher, while an Assistant District Attorney, wrote a letter of support for Respondent in a judicial disciplinary matter.
 - B. Respondent used a quote from that 2014 letter on the Respondent's 2016 election website under a tab stating: "I'm proud to have known and worked with the colleagues listed here and am humbled by their support."
 - C. While the quote on the website listed Michael J. Hoelscher as "Attorney, former Assistant District Attorney," Michael J. Hoelscher was sworn in as a district judge on January 12, 2015.
 - D. The quote on the website is not an exact quote from the 2014 Hoelscher letter, but the key words are the same.
 - E. The quote was used without permission and without designating the source or age of the quote.

- F. The quote was displayed in such a way that citizens would be led to believe it was a recent quote and that Respondent was supported by another judge.
3. Respondent sent an email to Judge Hoelscher on June 17, 2016, asking if Judge Hoelscher had any objection to Respondent using the quoted material.
 4. Judge Hoelscher acknowledged that Respondent sent the email asking if there was any objection, but he did not see the email at the private email address to which it was sent until after he became aware of the on-line quote. Judge Hoelscher indicated he did not authorize Respondent to use the quote in campaign materials.
 5. Judge Hoelscher contacted Respondent on July 12, 2016, and asked Respondent to remove the quote from the website. Respondent removed the information from the website.
 6. In response to the Commission's inquiry, Respondent conceded that he could see how the placement of the quote could be confusing, but it was never his intent for there to be confusion. Respondent indicated he was uncertain if the layout was ever given to him by his media support person for approval.
 7. Respondent indicated, in his opinion, there was a material difference between supporting a candidate and endorsing a candidate. Respondent does not believe use of the quote suggested endorsement by Judge Hoelscher and, therefore, does not think the use of the quote was improper.

CONCLUSIONS OF LAW

1. Rule 4.1(A)(4) of the Code of Judicial Conduct, Rule 601B, provides:

(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. Rule 4.1(C) of the Code of Judicial Conduct, Rule 601B, provides:

A judge or *judicial candidate* shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or *judicial candidate*, any activities prohibited under paragraphs (A) and (B).

3. Rule 4.2(A)(3) of the Code of Judicial Conduct, Rule 601B, provides:

(A) A *judicial candidate* in a retention, non-partisan, or partisan *public election* shall:

(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. Comment [7] of Rule 4.1 of the Code of Judicial Conduct, Rule 601B, provides:

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(4) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

5. The Commission has determined that Respondent violated the above-referenced Rules by using a quote from a stale letter of support without obtaining permission and failing to review or approve campaign material which resulted in misleading campaign material.

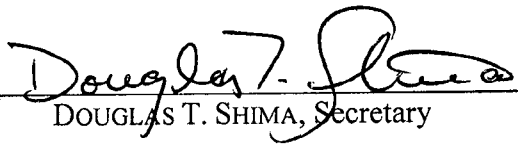
IT IS THEREFORE ORDERED that Timothy H. Henderson desist from providing misleading campaign material, in violation of the above-cited Rules.

This Order, if accepted, shall be made public pursuant to Rule 611(a). See 2015 Kan. Ct. R. Annot. 795.

The Secretary of the Commission on Judicial Qualifications is hereby instructed to mail this Order with a copy of Rule 611, as adopted by the Supreme Court of Kansas, to Respondent. Respondent is requested, in accordance with Rule 611, to either (a) agree to comply with the Order by accepting the Order by written acknowledgment directed to the Secretary of the Commission; or (b) refuse to accept the Order. Any written acknowledgement to comply or refusal to accept shall be served upon the Secretary of the Commission within twenty days from the date of this Order. This order is deemed to have been refused if the Secretary of the Commission receives no communication from Respondent within twenty days after service of this Order.

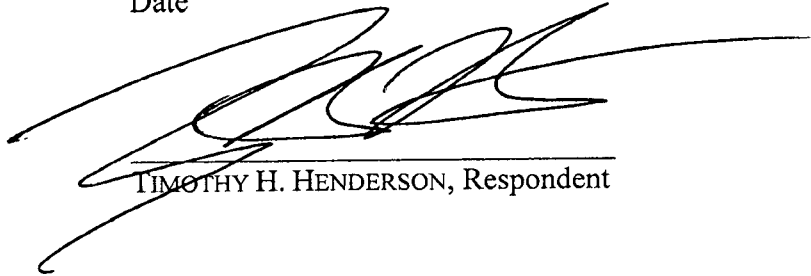
BY ORDER OF THE COMMISSION dated this 28th day of October, 2016.

COMMISSION ON JUDICIAL QUALIFICATIONS

By: 
DOUGLAS T. SHIMA, Secretary

APPROVED & ACCEPTED

4/13/17
Date


TIMOTHY H. HENDERSON, Respondent