

IN THE SUPREME COURT OF OHIO

THE HONORABLE MAUREEN O’CONNOR,)	
ASSOCIATE JUSTICE OF THE SUPREME)	AN ORIGINAL ACTION IN THE
COURT OF OHIO,)	SUPREME FOR A WRIT OF
)	PROHIBITION
RELATOR,)	
)	
-VS-)	CASE NUMBER:
)	
THE HONORABLE WILLIAM WOLFF,)	
CHIEF JUSTICE OF THE OHIO COURT OF)	
APPEALS,)	COMPLAINT IN PROHIBITION
)	
RESPONDENT.)	

INTRODUCTION

1. Relator, the Honorable Maureen O’Connor, is an associate justice of the Supreme Court of Ohio, having been elected to a six year term of office in November 2002, and having taken the oath of office on January 1, 2003.

2. Relator seeks extraordinary relief in this Court based on the peculiar conduct of proceedings which have been initiated against her, which allege that she violated Canon 7 of the Code of Judicial Conduct through the production and broadcast of certain television ads which she ran while campaigning to be elected associate justice.

3. The essence of this action for prohibition is not the substance of the ethical charges against the Relator, against which she will defend herself in the proper forum. Rather, it is the composition of the tribunal in which she is compelled to proceed. Respondent Appellate Chief Justice William Wolff – who, pursuant to Gov. Jud. R. II, is empowered to select vital participants in this disciplinary process, but has already sat in judgment on this very same matter in an earlier case, has

previously voted against the Relator, and is thus literally prejudiced against her. He has been asked to recuse himself but refuses to do so.

THE ETHICAL ALLEGATIONS AT ISSUE

4. In October 2002, Relator began airing certain campaign commercials in support of her candidacy for associate justice. Two such advertisements included “screen-in-screen” vignettes, in which Relator was depicted in black judicial robes, presiding over simulated courtroom proceedings. During this portion of her television advertisement, a narrator described the judicial experience which the Relator had accumulated during her career.

5. During both the fifteen second and the thirty second versions of the campaign advertisement described above, white text appeared on the screen below the courtroom vignettes, describing the Relator as a “Common Pleas Court Judge 1993-95” and “Probate Court Magistrate 1985-93.”

6. Although she was Lieutenant Governor of the State of Ohio during her campaign for associate justice, Relator had in fact served as a Summit County Common Pleas Judge between 1993 and 1995, and as a Probate Referee in the Summit County Court of Common Pleas between 1985 and 1993.

7. In July 1995, Ohio R. Civ. P. 53(A) was amended to change the title of “referee” to “magistrate,” a terminology change only, representing no substantive change in duties or authority or qualifications.

8. On 22 October 2002, Dennis L. White (“White”), acting in his capacity as Chair of the Ohio Democratic Party, filed a formal disciplinary complaint with the Appellate Chief Justice of the Ohio

Court of Appeals, who at that time was Judge Lee H. Hildebrant, Jr., and with the Office of Disciplinary Counsel, which complaint alleged that the Relator, in airing the advertisements at issue, had violated the Canons of Judicial Conduct.

9. White alleged that the Relator herein had violated Judicial Canon 7(B)(2)(f) by portraying herself as a sitting judge in the advertisements, thus misrepresenting her identity, qualifications and position to the voters.

10. White further alleged that the Relator herein had violated Judicial Canon 7(E)(1) by distributing campaign material which was misleading and deceiving.

**THE PROCEDURAL HISTORY OF
THE GRIEVANCE IN THE FIRST ACTION**

11. The grievance filed by White was subject to preliminary review by Judge Hildebrant, in his capacity as Chief Justice of the Court of Appeals, and pursuant to Gov. Jud. R. II, Section 5(C)(1)(b) was assigned to a three judge probable cause panel for review. That probable cause panel included among its members Judge William Wolff of Montgomery County.

12. On 25 October 2002, the probable cause panel found, by a vote of two-to-one, that there was probable cause to believe that the advertisement at issue violated Judicial Canon 7(B)(2)(f), and by the same margin held that there was not probable cause to believe the Relator herein had violated Judicial Canon 7(E)(1).

13. A Complaint was prepared and submitted by Judge Hildebrant to a three judge hearing panel consisting of presiding appellate judges from three appellate districts, none of whom resided in the

appellate district in which the alleged misconduct occurred (“the Hearing Panel”). The complaint alleged violation of Judicial Canon 7(B)(2)(f).

14. The Hearing Panel conducted a formal hearing, heard arguments and took testimony from White and the Relator herein on 29 October 2002.

15. On 1 November 2002, the Hearing Panel filed its Initial Report, Findings and Recommendations with Appellate Chief Justice Hildebrant, in which it determined that the complaint against Relator herein had been established by clear and convincing evidence. On 7 November 2002, the Hearing Panel issued its Final Report, Findings and Recommendations, holding that the Relator herein had violated Judicial Canon 7(B)(2)(f) through airing the advertisements at issue.

16. Pursuant to Gov. Bar. R. V, and to Gov. Jud. II, Section 5(E), a five judge commission was established to determine the proper disposition of the matter. The Relator herein submitted briefs in support of her position that the advertisement at issue did not violate Canon 7, arguing, *inter alia*, that the statements in the advertisements were true, and that the content of the advertisements was core political speech protected by the First and Fourteenth Amendments to the United States Constitution.

17. During the pendency of the matter before the five judge commission, White entered into a Joint Stipulation of Dismissal with the Relator herein, and agreed to withdraw his complaint against her.

18. Pursuant to Gov. Jud. R. II, Section 5(C)(3), the five judge commission voted, three-to-two, not to recommend the matter for prosecution to the Office of Disciplinary Counsel.

19. Pursuant to Gov. Jud. R. II, Section 5(C)(3), the Chair, Vice-Chair or Secretary of the five judge commission may independently refer a matter to disciplinary Counsel for prosecution, notwithstanding the vote of the commission as a whole not to do so.

20. The Chair of the five judge commission, Judge James Brogan, decided not to recommend the matter to the Office of Disciplinary Counsel. The commission did not designate a Vice Chair. The commission thus issued an Order terminating proceedings on or about 10 February 2003.

21. Pursuant to Gov. Jud. II., Section 5(H)(1), in actions against candidates for the office of Associate Justice of the Ohio Supreme Court, the Chief Justice of the Ohio Court of Appeals serves *ex officio* as Secretary of the five judge commission.

22. On 10 February 2003, the Chief Justice of the Ohio Court of Appeals, and Secretary of the five judge commission, was Judge William Wolff of Montgomery County.

**THE REINITIATING OF THE COMPLAINT
BY APPELLATE CHIEF JUSTICE WOLFF IN THE SECOND ACTION**

23. On 5 March 2003, Appellate Chief Justice Wolff, acting in his official capacity as Chief Justice of the Ohio Court of Appeals and as Secretary of the Board, wrote to Jonathan Coughlin in the Office of Disciplinary Counsel, urging reinstatement of the grievance against the Relator herein, who was by then Justice O'Connor, and purporting to refer the matter for prosecution to the Office of Disciplinary Counsel.

24. On 18 March 2003, Disciplinary Counsel Coughlin wrote to advise Appellate Chief Justice Wolff that the Office of Disciplinary Counsel was obligated by Gov. Jud. R. II, Section 2(B)(1) to refer all disciplinary complaints against a sitting associate justice of the Ohio Supreme Court to the

Appellate Chief Justice of the Court of Appeals for resolution, and thus “returned” the matter to Appellate Chief Justice Wolff for resolution.

25. On 20 March 2003, Appellate Chief Justice Wolff wrote to the Relator and informed her that he was reinitiating disciplinary proceedings against her, and gave her fourteen (14) days in which to respond to the allegations against her.

26. On 31 March 2003, undersigned counsel Raymond Vasvari wrote to inform Appellate Chief Justice Wolff that he would be representing the Relator, to request a stay, and to respectfully request that Appellate Chief Justice Wolff recuse himself from the matter based on the conflict created by his prior participation in the Probable Cause Panel in October 2002.

27. On 14 April 2003, in a letter to undersigned counsel Raymond Vasvari, Appellate Chief Justice Wolff extended the deadline for responding to the allegations against Justice O’Connor through and until 19 May 2003, but declined to recuse himself from further participation in the disciplinary case.

**THE POWERS OF THE APPELLATE CHIEF JUSTICE OF THE
COURT OF APPEALS PURSUANT TO GOV. JUD. R. II**

28. Pursuant to Gov. Jud. R. II, the Chief Justice of the Court of Appeals has substantial powers in the conduct of disciplinary proceedings, including in the prosecution of the action, the selection of participants, and presiding over the case itself.

29. Pursuant to Gov. Jud. R. II, Section 5(C)(3)(c), the Chief Justice of the Court of Appeals can *sua sponte* reinitiate proceedings such as those which give rise to the instant Complaint in Prohibition.

30. Pursuant to Gov. Jud. R. II, Section 2(B)(3)(a), read in *pari materia* with Gov. Jud. II, Section 5(H)(1), the Chief Justice of the Court of Appeals appears empowered to appoint a special investigator, who will later serve as relator, should the renewed disciplinary matter advance beyond the probable cause stage.

31. Pursuant to Gov. Jud. R. II, Section 5(H)(1), the Chief Justice of the Court of Appeals is empowered to appoint a probable cause panel of his choosing in the reinitiated matter.

32. Pursuant to Gov. Jud. R. II, Section 5(H)(2) and Section 2(B)(3)(a), the Chief Justice of the Court of Appeals is empowered to empanel and preside over the special court which hears ethical complaints against sitting justices under Gov. Jud. R. II, Section 4.

BASIS FOR A WRIT OF PROHIBITION

33. As is made clear in his letters dated 20 March 2003 and 14 April 2003, Chief Justice Wolff presently intends to act, and is about to act in a judicial or quasi-judicial capacity, and exercise judicial or quasi-judicial authority over the Relator herein, by (a) compelling her to respond to disciplinary charges against her, and by (b) submitting her response and a complaint to a probable cause panel, and (c) potentially naming an investigator and relator of his own choosing, and (d) potentially convening, presiding over and participating in a special court convened pursuant to Gov. Jud. R. II, Section 4.

34. In furtherance of this, Appellate Chief Justice Wolff designated a three judge probable cause panel in this matter by letter dated 22 May 2003.

35. There is no adequate remedy at law to prevent Chief Justice Wolff from undertaking this course of conduct, other than a writ of prohibition issued by this Court. Moreover, this course of

conduct will result in irreparable harm to the Relator, for which no remedy at law will be adequate, in that she will be compelled to appear and defend herself in proceedings that will reflect upon her integrity as a member of both the bench and bar, which have been initiated, and will be organized, staffed and overseen by a judge who has already sat in judgment of her case, a circumstance that is fundamentally unfair.

36. The actions of Chief Justice Wolff are unauthorized at law. Although a strict reading of the Rules for the Governance of the Judiciary permits that as Chief Justice of the Court of Appeals, he preside as described above over any renewed action against the Relator, judicial ethics require that he recuse himself.

37. The Code of Judicial Conduct, at Canon 3(E)(1) requires that a judge shall disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including without limitation, under Canon 3(E)(1)(d)(iii) when the judge has previously acted as a judge in the same proceeding. Judicial Canon 3(C) extends the ethical requirements regarding recusal and disqualification to both the adjudicatory and administrative aspects of judicial conduct.

38. Moreover, Chief Justice Wolff is now participating, and intends to continue to participate in a proceeding against the Relator herein, which is going forward at his behest, will be prosecuted, if at all, by the investigator and relator he designates, and will be reviewed and decided by the panel he convenes and over which he might preside. At issue in that proceeding will be the same facts and the same questions of law which Chief Justice Wolff considered, and on which he ruled, as a member of the original probable cause panel. To permit him to do so is to deny the Relator herein a fair and impartial proceeding, and thus due process of law.

Wherefore, Relator Justice Maureen O'Connor, having fully stated her claim for extraordinary relief, respectfully requests that:

- A. This Court constitute itself pursuant to the procedures required when a justice thereof is a party to an action before it, and;
- B. That this Court issue a Writ of Prohibition forbidding Chief Justice William Wolff from having any further involvement in the disciplinary matter commenced by his letter of 20 March 2003, and involving the alleged violation, by the Relator Herein, of Canon 7 of the Code of Judicial Conduct through the production and broadcast of the campaign ads described with particularity herein, and mandating that he recuse himself from this matter forthwith;

Respectfully submitted,

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