

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

FILED
JUN 25 1991

COMMISSION ON
JUDICIAL CONDUCT

In Re the Matter of:)
)
Honorable Fred J. Stoker) NO. 90-981-F-22
Judge)
Clark County District Court) **COMMISSION DECISION**
1200 Franklin Street)
P.O. Box 5000)
Vancouver, WA 98668)
_____)

All members of the Commission having considered the verbatim record of the Fact-Finding Hearing held on April 9, 1991, all documents filed, the Report and Recommendation of Subcommittee, and Respondent's Objections to Proposed Findings of Fact and Conclusions, hereby finds by clear, cogent and convincing evidence the following:

FINDINGS OF FACT

1. The Respondent is now and at all times relevant herein a Judge of the Clark County District Court in Vancouver, Washington.
2. In August 1990, during his re-election campaign, Judge Stoker placed, or caused to be placed, a campaign sign and campaign literature in both the Democratic and Republican booths at the Clark County Fair. The signs and literature were clearly visible to fairgoers.

3. Judge Stoker could be seen inside each booth at various times during the fair, surrounded by partisan political symbols, banners and signs.

4. Judge Stoker was aware that the Canons of Judicial Conduct prohibited a judicial candidate from identifying himself as a member of a political party or contributing to a political party or organization.

5. The Republican and Democratic Parties have, in the past, invited candidates for public office to appear or leave campaign literature in their respective Clark County fair booths. Not all candidates for public office and not all groups who disseminate campaign literature are invited to appear or leave their materials in the Democratic or Republican booths.

6. A candidate for public office can rent an individual booth at the Clark County Fair at the candidate's expense.

7. Not everyone who may appear before Judge Stoker in the Clark County District Court is a registered voter. Not every registered voter in Clark County is a member of the Democratic or Republican Parties.

8. In Clark County, candidates for judicial office are routinely invited to appear and/or speak at political party picnics or other partisan gatherings. At such political gatherings, judicial candidates do not identify themselves as members of a political party or organization.

9. In August 1990, in furtherance of his re-election campaign, Judge Stoker's campaign treasurer paid \$65 to the Clark

County Democratic Party for Judge Stoker's use of the Democratic booth at the fair. The money was used by the party to help defray the costs of the booth in its partisan political interests.

10. The majority of people who attend the Clark County Fair pay an entrance fee to see the animals, ride the rides, see the displays and enjoy the entertainment. For most the fair is not a "political gathering" but entertainment, rest and relaxation.

11. In the past, many judicial candidates rented their own booths at the county fair. No other judicial candidate, in a single campaign, has placed signs and campaign material in both the Republican and Democratic booths, and campaigned from inside both booths, and paid a fee to a political party for the use of one of the booths.

CONCLUSIONS

1. By campaigning from within a political party's booth, posting his signs in the Democratic and Republican Party booths and by placing his campaign literature within these booths, Judge Stoker gave the impression either that he was running as a Democrat, or enjoyed the support of the Democratic Party, or that he was running as a Republican with Republican Party support. At best, he gave the impression that he was running a bipartisan not a non-partisan campaign for judicial office, which is in violation of Canon 7(B).

2. A given fairgoer, passing by the booth that Judge Stoker was occupying at the time, would be given the distinct impression that he was supported or endorsed by that political party. Therefore, in violation of CJC 7(A)(2), he was identifying himself as a member of a particular political party to numerous Clark County voters, which would vary depending on the particular booth he was occupying at the time.

3. It cannot be assumed that all voters are sufficiently knowledgeable to know that a judgeship in Washington is a non-partisan political office. The citizenry know that judges are non-partisan by the judges' words and conduct in and out of the courtroom, before, during and after their campaigns for election. A judicial campaign which can leave some citizens with the impression that a particular judge is a political partisan will erode the general appearance of the judicial non-partisanship.


4. The money paid by Judge Stoker to the Democratic Party for use of its booth at the fair was an assessment by, or contribution to, a political party prohibited by CJC 7(A).

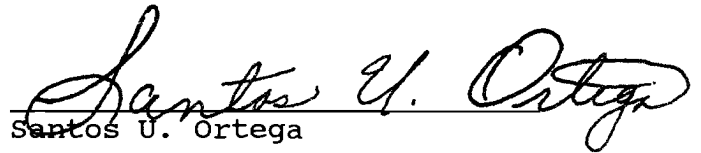
5. The Clark County Fair is not a "political gathering" within the meaning of CJC 7(A)(2).

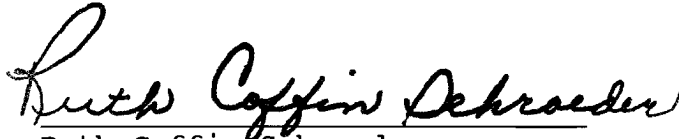
ORDER OF ADMONISHMENT

Based upon the foregoing Findings of Fact and Conclusions, and having taken notice of a prior admonishment issued to Judge Stoker, the Commission determined that respondent violated Canon 7 of the Code of Judicial Conduct, and hereby admonishes respondent.

Dated this 25th day of June, 1991.


Steven A. Reisler, Chair


Santos U. Ortega

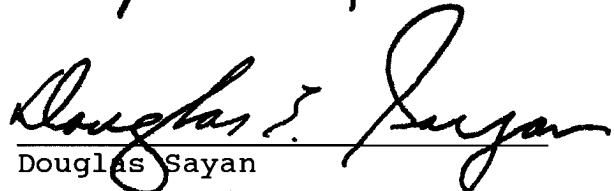

Ruth Coffin Schroeder

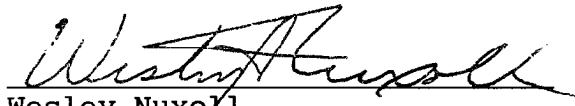

Pamela T. Praeger


Nancyhelea Hunter Fischer


Hal V. Reasby


Honorable Thomas E. Kelly


Douglas Sayan


Wesley Nuxoll


Honorable Donald H. Thompson

Dissenting in part and concurring in part. - The majority has concluded that Judge Stoker's "campaigning" from each of the booths maintained by the Republican and Democratic Parties at the 1990 Clark County Fair violated Canon 7(B) of the Code of Judicial Conduct. This is so, says the majority, because Judge Stoker gave the impression he was running as a partisan candidate or enjoyed the support of either or both of the major political parties. I disagree.

The Commission's allegations of misconduct fall within subsection (B)(1)(d) of Canon 7. This subsection proscribes the candidate's allowance of false, misleading or deceptive advertising. Implicit in the majority's ruling is the concept that Judge Stoker misled the County Fair attendees by falsely suggesting that he was a member of either political party. Nothing in Judge Stoker's campaign material displayed at either booth suggested he was a member of either party.

In my view, the simultaneous display of identical campaign material by a non-partisan candidate in each booth of the competing political parties in essentially the same location can hardly suggest membership in either party. The common understanding of party affiliation is that membership in the Republican or Democratic party is mutually exclusive. One cannot, at the same time, be a member of both parties. We would have a different situation if Judge Stoker displayed campaign material at different times and places from within the facilities of a partisan political organization. Any such singular display would indeed suggest

improper party affiliation. This however is not our case.


As a fall back position, the majority concludes that Judge Stoker, at minimum, gave the impression he was "running a bi-partisan, not a non-partisan campaign." The majority does not explain how a "bi-partisan campaign" falls within the strictures of Canon 7(B)(1)(d). Does that suggest some sort of a hybrid political organization to which Judge Stoker wrongfully claims affiliation? I think not. At most it suggests that Judge Stoker has bi-partisan support. This can hardly be classified as misleading or deceptive. The display of Judge Stoker's campaign material by each organization is a clear indication of tacit support of his candidacy.

Nevertheless, I do agree that the money paid to the Democratic Party, with Judge Stoker's approval, for use of its booth was done in violation of Canon 7(A)(2). This subsection of the Canon prohibits a judge from contributing to a political party or organization. Judge Stoker's attempt to classify the payment as a "cost-sharing" expense for the use of the booth belies the fact that the payment assisted the Democratic Party in promotion of its partisan candidates or causes. As such, it was a contribution proscribed by the Canon.

I do not believe Judge Stoker's conduct amounts to a blatant violation of this section of the Canons. He asserts the payment was merely an assessment of costs and not a contribution. Nevertheless his subjective belief does not excuse his conduct.

In view of the prior admonishment, I concur in the majority's

assessment of an admonishment for Judge Stoker's violation of Canon
7(A)(2) by his contribution to the Democratic Party only.


Honorable John A. Petrich