



The Judiciary Commission of Louisiana

400 Royal Street, Suite 1213
New Orleans, Louisiana 70130-8145

Telephone (504) 310-2597
Fax (504) 310-2596

April 26, 2022

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
NO. 7020 3160 0001 3876 7023**

The Honorable Sharon Ingram Marchman
Fourth Judicial District Court
300 St. John Street, Suite 400
Monroe, Louisiana 71201

Re: Case No. 0383; File Nos. 18-454, 18-455, 18-461, and 18-478

Dear Judge Marchman:

Following your appearance before the Judiciary Commission on March 25, 2022, and the Commission's review of the pleadings, exhibits, and briefs of the parties, the Commission considered the referenced case. The case arose from a campaign video posted on Facebook and three Public Statements issued by the Louisiana Judicial Campaign Oversight Committee finding that you violated provisions of the Code of Judicial Conduct during your 2018 campaign for the Second Circuit Court of Appeal. The Notice of Hearing alleged that you and your campaign engaged in improper campaign activity, including making statements and releasing advertisements that were false, misleading, improperly commented on a pending criminal case, inappropriately impugned the representation of defendants in criminal cases, and/or were otherwise partisan, political, undignified, or improper.

The Commission has a responsibility to the public to ensure that judicial officers comply with the highest ethical standards and practices. The Commission also has a goal of helping judges avoid conduct or practices that could give rise to future ethical violations.

With these considerations in mind, and after serious review and discussion of the matter, the Commission concluded that you, through your issuance of some of the campaign advertisements and statements at issue, committed ethical misconduct and violated Canons 1, 2, 2A, 3A(8), 7A(2), 7A(3), 7A(10), and 7B(1) of the Code of Judicial Conduct.¹ Pursuant to

¹ **Canon 1** states in part: "An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved." **Canon 2** provides that a judge "shall avoid impropriety and the appearance of impropriety in all activities." **Canon 2A** directs that a judge "shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." **Canon 3A(8)** provides, in pertinent part: "A judge shall not, while a proceeding is pending in any Louisiana state court, make any public comment that might reasonably be expected to affect its outcome or impair its

Louisiana Supreme Court Rule XXIII, Section 10, the Commission ultimately decided to close this matter with a public admonishment to you for these violations rather than making a recommendation for discipline to the Louisiana Supreme Court.²

The Commission is sensitive to judges' First Amendment rights to communicate with voters and present themselves and their views during a campaign for elective office. Judicial campaigns, however, are unlike campaigns for other elective office and therefore must be conducted in accordance with the ethical rules that apply to judges and judicial candidates, which "attempt to reconcile the perceived need for an elected judiciary with the general desire for a judiciary of *unquestioned integrity, independence, and impartiality*." See Charles Gardner Geyh et al., *Judicial Conduct and Ethics* § 10.01 (6th ed. 2020) (emphasis added). Judicial campaigns are different than typical political campaigns because once judges are elected, they are charged with serving as models of impartiality and dignity and must exercise the restraint necessary to do so. Accordingly, the Code of Judicial Conduct requires that campaigns for judicial office be conducted in a manner that reflects the dignity and integrity of the judicial office being sought.

The "Right Experience" Ad

In your video campaign advertisement referred to as the "Right Experience" ad, a narrator states:

When you vote, the right experience is what matters. While Sharon Marchman has spent her thirty-three year career protecting you, her opponent Jimbo Stephens' law firm, Stephens and Stephens, was getting paid to defend Sonny James Caston, convicted of murdering a deputy sheriff. Then he reversed a jury's conviction of a burglar with a twelve-page criminal history. When asked about a crime, Judge Jimbo Stephens stated, "It's illegal to get caught." Vote for the right experience— Judge Sharon Marchman.

fairness."

Canon 7A(2) directs that a judge or judicial candidate shall not "publicly endorse or publicly oppose another candidate for public office." **Canon 7A(3)** states that a judge or judicial candidate shall not "make speeches on behalf of a political organization or a candidate for public office." **Canon 7A(10)** states that a judge or judicial candidate shall not "make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any Louisiana state court." **Canon 7B(1)** provides that a judge or judicial candidate shall "maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary."

² Louisiana Supreme Court Rule XXIII, Section 10 provides: "If, after a hearing, the Commission finds that a judge violated one or more provisions of the Code of Judicial Conduct or of Article V, § 25(C) of the Constitution but concludes that a recommendation of discipline is not warranted, the Commission is authorized to publicly remind, caution, or admonish the judge upon the affirmative vote of a majority of the Commission. Any such reminder, caution, or admonishment is not considered discipline, but may be referenced in any subsequent proceeding before the Commission in accordance with Section 3(e) of this rule."

This advertisement was clearly meant to convey to the public that you had the “right experience” to be elected to the Court of Appeal and that Judge Stephens did not. Although it is certainly permissible for judges to compare their experience with that of their opponents, this campaign ad did so by inappropriately casting aspersions on Judge Stephens’ and his father’s fulfillment of fundamental and appropriate functions in our legal system.

The ad first notes that while you “spent your thirty-three year career protecting [the public],” Judge Stephens’ law firm was “getting paid to defend” a person convicted of murdering a law enforcement officer. Although this portion of the ad may not contain any false statements, it omitted the fact that “approximately 30 years ago, Judge Stephens’s father . . . accepted an appointment by the court to represent an indigent criminal defendant[,] who had a right to be represented by competent counsel at trial,” as noted by the Judicial Campaign Oversight Committee.

Not only did this omission “mislead[] the public as to the circumstances under which Judge Stephens’ father and law partner came to represent” the defendant at issue, as found by the Judicial Campaign Oversight Committee, the ad stated or expressly implied that Judge Stephens did not have the right experience or work to protect the public because his father represented a criminal defendant accused of a reprehensible crime. Even ignoring the fact that Judge Stephens’ father was providing an important public service by representing a defendant who could not afford an attorney, as a lawyer and a judge for many years, you are fully aware that all defendants have a fundamental right to counsel, regardless of the crime with which they are charged. Nonetheless, you chose to air an ad that inappropriately undermines the vital role criminal defense attorneys play in this state’s adversarial system of justice and the basic right of all accused persons to zealous representation. *See In re Santino*, 257 So. 3d 25, 34-35 (Fla. 2018) (removing judge for improper campaign ads that in part “expressly stated or implied that [her opponent] could not be trusted for laboring in an occupation that serves to breathe life and meaning into the Sixth Amendment” and were “designed to evoke basic human emotions that our legal system, this profession, and our State and Federal Constitutions all seek to overcome” (internal quotation marks omitted)).

Likewise, in the same ad, you clearly attempted to convey that Judge Stephens did not have the “right experience” because he “reversed a jury’s conviction of a burglar with a twelve-page criminal history.” Again, you omitted that Judge Stephens, as part of a unanimous panel of judges on the Second Circuit, “vacated the defendant’s conviction and remanded [the case] for a new trial because the defendant was improperly tried by a six-person jury, rather than the constitutionally and statutorily mandated twelve-person jury,” as noted by the Judicial Campaign Oversight Committee, thereby rendering the jury verdict invalid. *See State v. Johnston*, 51,779 (La. App. 2 Cir. 4/11/18), 245 So. 3d 1231. Additionally, the “twelve-page criminal history” was not referenced in and had nothing to do with the Second Circuit’s decision, and it was developed by you and your campaign outside of the record in the case, as you and your campaign acknowledged.

As an experienced judge, you know that judges are duty-bound to attempt to apply the law faithfully and impartially, regardless of whether a party is particularly sympathetic or unsympathetic, and that any judge, including you, would have been required to reach the same conclusion as Judge Stephens in the *Johnston* case. Moreover, you also know that a defendant’s

criminal record is admissible in a criminal trial only under certain limited circumstances and knew that Mr. Johnston's criminal history did not and could not play any role in the Second Circuit's decision in the matter. Accordingly, your choice to refer to this criminal history could have served no purpose other than to make it appear that Judge Stephens' decision in this case, which relies strictly on controlling law, was somehow irresponsible or contrary to justice. Your use of this decision as an example of how Judge Stephens does not have the "right experience" to be elected as an appellate judge thus undermines foundational principles of our legal system, has the distinct potential to distort the public's perception regarding the proper role of judges, and erodes the independence of the judiciary and the public's confidence in it. Judges have a duty to be more careful in their express or implied criticism of judicial decisions so as to avoid such potential consequences.

Additionally, because the Second Circuit remanded the case for a new trial and because Mr. Johnston's criminal history may very well have been inadmissible at a new trial, your unnecessary disclosure of that criminal history to the public at large could have reasonably been expected to influence the new jury pool and affect the outcome or impair the fairness of the case before its final conclusion. In fact, had you won the election, the case may have come back before you on the Second Circuit, which would have required you to recuse yourself due to circumstances of your own making.

Finally, this ad sought votes based on the fact that Judge Stephens' father represented a defendant accused of a horrible crime and the fact that Judge Stephens vacated the conviction of a burglar with a lengthy criminal history. Accordingly, the ad may rightfully cause defendants facing criminal charges who appear before you and their attorneys to question whether you are capable of acting in a fair and impartial manner or whether you have prejudged them based on their criminal histories and/or the accusations made against them.

In sum, even if the ad did not contain any actual false statements, and was therefore arguably not violative of Canon 7A(9),³ it directly undermined the integrity, impartiality, and independence of the judiciary (and the public's confidence in such) and improperly publicly commented on a pending case in violation of Canons 1, 2, 2A, 3A(8), 7A(10), and 7B(1).

The "Front Porch" Video

You later appeared in another campaign ad, referred to as the "Front Porch" video, in which you made the following statements, among others:

This attack against me is an attack against President Trump and all Republicans
On November 6th you have a choice. You can support President Trump and the Republican Party by voting for me, or you can support Bernie Sanders, Jimbo Stephens, and their liberal agenda.

³ **Canon 7A(9)** provides that a judge or judicial candidate shall not "knowingly make, or cause to be made, a false statement concerning the identity, qualifications, present position, or other fact concerning the candidate or an opponent."

You stated that references to President Trump were a response to Judge Stephens referring to himself as a “Trump Independent.” Although the Commission understood that you felt the need to correct what you interpreted to be a misleading statement by Judge Stephens, stating that a vote for you supported President Trump and the Republican party went beyond simply responding to Judge Stephens. By informing the public regarding a way in which they could support President Trump, who by then had made clear his intent to run for reelection, the Commission found that you violated Canon 7A(2)’s prohibition against publicly endorsing another candidate for public office.⁴ In addition, though judges and judicial candidates may identify themselves as members of political parties pursuant to Canon 7(C)(1), by informing the public about how to support the Republican Party and defining attacks on you as an attack against President Trump and “all Republicans,” the Commission regarded your statements as a violation of Canon 7A(3)’s prohibition against making speeches on behalf of a political organization or a candidate for public office.

Reminder Regarding Remaining Allegations in the Notice of Hearing

In addition to the issues addressed above, which form the basis for the Commission’s admonishment, the Commission wished to include a reminder to you regarding the other campaign ads and statements referenced in the Notice of Hearing. Although the Commission did not find any judicial misconduct concerning these statements, the Commission voted to remind you that, should you run for judicial office again in the future, you should be very careful that you do not engage in any campaign conduct that could be deemed violative of the Code of Judicial Conduct.

⁴ Black’s Law Dictionary (11th ed. 2019) defines a “candidate” as “[a]n individual seeking election to an office, membership, award, or like title or status.” Merriam-Webster defines “candidate” as “one that aspires to or is nominated or qualified for an office, membership, or award.” <https://www.merriam-webster.com/dictionary/candidate>; see also Canon 7H (“A candidate is a person seeking election or reelection to a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support, whichever comes first. The term ‘candidate’ has the same meaning when applied to a judge seeking election to judicial or non-judicial office.”)

It was frequently reported across multiple news outlets in 2017 and 2018 that Donald Trump was seeking reelection in 2020. See, e.g., *President Trump tells the FEC he qualifies as a candidate for 2020*, Washington Post (Jan. 20, 2017), <https://www.washingtonpost.com/local/2017/live-updates/politics/live-coverage-of-trumps-inauguration/president-trump-tells-the-fec-he-qualifies-as-a-candidate-for-2020/>; *‘Keep America Great’: Trump Reelection Effort Raised \$13M So Far, Report Says*, Fox News (Apr. 15, 2017), <https://insider.foxnews.com/2017/04/15/president-donald-trump-2020-reelection-campaign-raised-13-million-april>; *Trump’s 2020 Campaign Announcement Had a Very Trumpian Rollout*, N.Y. Times (Feb. 27, 2018), <https://www.nytimes.com/2018/02/27/us/politics/trump-2020-brad-parscale.html>; *Trump names ‘digital guru’ Brad Parscale campaign manager for 2020 re-election bid*, CNBC.com (Feb. 27, 2018), <https://www.cnbc.com/2018/02/27/trump-names-campaign-manager-for-2020-reelection-bid.html>.

Notably, during your campaign, you ran ads and stated that Judge Stephens and Senator Bernie Sanders are both members of the same “Independent Party.” As explained by the Judicial Campaign Oversight Committee, however, “Judge Stephens is registered with the Louisiana ‘Independent Party’ while Sen. Sanders designates himself as an ‘Independent’ with ‘no party’ affiliation.” The Commission recognized that your campaign researched this issue and that the public information regarding it is somewhat confusing, and the Commission appreciated that you removed the ads containing this remark after the Judicial Campaign Oversight Committee released its Public Statement. However, thereafter in the “Front Porch” ad, you gratuitously continued to link Judge Stephens with Senator Sanders by saying if the public did not vote for you, such a decision would “support Bernie Sanders, Jimbo Stephens, and their liberal agenda.” Although potentially protected by the First Amendment, the Commission believes that discussions regarding national party politics and candidates have no place or relevance in races for local judicial office.

The Commissioners also expressed concern regarding numerous other statements in the “Front Porch” video, including that Judge Stephens had “rejected” the Republican Party’s “Christian, conservative values,” was “using big government tactics with the Campaign Oversight Committee” to perpetuate “fake news,” and that the Judicial Campaign Oversight Committee, “which includes a member of the press and New Orleans lawyers, has no authority except to express its own opinions.” Although likely protected by the First Amendment, these statements appear to be disparaging in several respects and contain significant omissions.⁵

Conclusion

Judges and judicial candidates should strive to refrain from the indecorous political campaign tactics that have become, unfortunately, all too common in recent years, especially in campaigns for non-judicial office. Instead, judges should conduct their campaigns in a manner befitting the integrity of the office being sought and in a way that promotes, rather than undermines, public confidence in the judiciary and the important role it serves in society. The Commission, however, took into consideration your lengthy and diligent service as a judge, your good disciplinary history, the excellent character references submitted into the record of this matter, and that your campaign ads and statements were made in the course of a fast-paced and heated campaign.

Please be aware that the issuance of this admonishment is not considered to be an exoneration of your actions. To the contrary, the Commission determined that your conduct violated the Code of Judicial Conduct. Furthermore, Louisiana Supreme Court Rule XXIII, Sections 3(e) and 10 permit this admonishment to be considered by the Commission in subsequent

⁵ For instance, although the Judicial Campaign Oversight Committee did include a *former* member of the press and two New Orleans-area lawyers, the specific reference to these members appears designed to discredit the public statements of the Committee as a whole, given how members of your electorate may view New Orleans attorneys and the press. You specifically omitted, however, that the Committee was also composed of judges and persons from all over the state, including from North Louisiana. This statement and omission come very close to giving at least an appearance of bias against attorneys from New Orleans, who may appear before you.

Commission proceedings and by the Supreme Court if the Commission makes a recommendation of discipline as a result of subsequent proceedings.⁶ It is Commission policy to make all judicial officers who have been the subject of complaints that result in a letter of admonishment aware of Rule XXIII, Section 3(e).

Pursuant to Louisiana Supreme Court Rule XXIII, Section 10, this admonishment is public.

Sincerely,



David Becker
Commission Counsel

cc: Joseph R. Ward, Jr., and Sedric E. Banks, Counsel to Judge Marchman
Chair and Members, Judiciary Commission of Louisiana
Sandra A. Vujnovich, Chief Executive Officer
Michelle A. Beaty, Special Counsel
Michael D. Bowers, Assistant Special Counsel

⁶ **Rule XXIII, Section 3(e)** provides: “Closed files of prior proceedings concerning a judge may be referred to by the Commission at any stage of the current proceedings. In cases in which a notice of hearing is filed, the notice of hearing may contain allegations relating to the Commission’s closure of files involving the respondent judge with either a caution or an admonishment as part of the judge’s prior history before the Commission. The Office of Special Counsel may present evidence of the Commission’s closure of files involving the respondent judge with a caution or an admonishment at the hearing before a hearing officer, or before the Commission if no hearing officer is appointed, for consideration by the Commission in deciding whether to make a recommendation of discipline, and by this Court if a recommendation of discipline is made.”