ORDERS AND OPINIONS

OF THE

ILLINOIS COURTS COMMISSION

Cite as 3 Ill. Cts. Com. ___.

(No. 91 CC 1.)

In re APPELLATE JUDGE ROBERT C. BUCKLEY
of the First District Appellate Court, Respondent.

Order entered October 25, 1991 — Motion for reconsideration denied December 11, 1991.

SYLLABUS

On April 18, 1991, the Judicial Inquiry Board filed a complaint (later amended), charging the respondent with conduct that is prejudicial to the administration of justice and that brings the judicial office into disrepute. In summary form, the complaint alleged that the respondent made a series of statements and representations in his campaign advertisements thereby casting doubt upon his capacity to decide impartially issues that may come before him, and that by such conduct the respondent violated Supreme Court Rules 61, 62A and 67B(1)(c).

Held: The respondent's violation of the Code of Judicial Conduct is insubstantial, insignificant, and does not warrant the imposition of a reprimand.

Subsequent to the Courts Commission's decision, the respondent filed suit in federal court challenging the constitutionality of Supreme Court Rule 67B(1)(c) and seeking declaratory and injunctive relief.

The U.S. Court of Appeals for the Seventh Circuit held that the rule violated the first amendment of the U.S. Constitution. See *Buckley v. Illinois Judicial Inquiry Board,* 997 F.2d 224 (7th Cir. 1993). Rule 67 was subsequently amended. The amended version is set forth in Appendix B of this volume.

Sachnoff & Weaver, Ltd., of Chicago, for Judicial Inquiry Board.

William J. Harte, Ltd., Chicago, for respondent.

Before the COURTS COMMISSION: CUNNINGHAM, J. chairman, STOUDER, SCOTT, LORENZ and MURRAY, JJ., commissioners. ALL CONCUR.

ORDER

The Illinois Judicial Inquiry Board (Board) filed a complaint with the Illinois Courts Commission (Commission) charging Justice Robert C. Buckley, (respondent) with willful misconduct in office, conduct that is prejudicial to the administration of justice and conduct that brings the judicial office into disrepute in that he approved, authorized, and distributed a certain campaign advertisement in support of his candidacy which violated the Code of Judicial Conduct (Code). Specifically, the Board's complaint alleges the respondent's conduct violated Illinois Supreme Court Rules 61, 62A, and 67B(1)(c). 134 Ill. 2d R. 61, 62A, 67B(1)(c).

In the instant case, the respondent's campaign committee for his election to the Illinois Supreme Court shared office space with the campaign

committees of James O'Grady, who was running for the position of Cook County Sheriff, and Jack O'Malley, who was running for the position of Cook County State's Attorney. While utilizing this office space for his election committee in or about the summer or fall of 1990, the respondent reviewed, approved, and authorized a certain campaign advertisement made on his behalf. The advertisement contained the following statements:

> "Our Toughest Anti-Crime Team;"
> "FOR THE VICTIMS OF CRIME;"
> "the strongest anti-crime team we can elect;"
> "I'll deliver justice with an even hand, making public safety one of my top concerns -- never forgetting the victims of crime;"
> "Has never written an opinion reversing a rape conviction;"
> "Reinstated the conviction of a major drug dealer;"
> "Help win the war against crime and drugs;" and
> "Elect Justice Robert Buckley to the Supreme Court -- for the victims of crime."

The amended complaint alleges the advertisement violates Supreme Court Rule 61, (134 Ill. 2d R. 61), which provides in pertinent part that "*** [a] judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.***" The Board also alleges that the advertisement violates Illinois Supreme Court Rule 62A, (134 Ill. 2d R. 62A), which provides that "[a] judge should respect and comply with the law and

should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Finally, the Board alleges that the advertisement violates Illinois Supreme Court Rule 67B(1)(c) (134 Ill. 2d R. 67B(1)(c)), which states in pertinent part that "[a] candidate, including an incumbent judge, for a judicial office filled by election or retention should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. . . ."

Initially, we note that the respondent moved to dismiss the complaint on constitutional grounds. The respondent based his argument on that portion of Supreme Court Rule 67B(1)(c) which admonishes judicial candidates from announcing their views on disputed legal or political issues. In the instant case, however, the amended complaint relates solely to the so-called pledges and promises provision of Supreme Court Rule 67B(1)(c). Thus, we need not address the constitutionality of the disputed legal or political issues provision of Supreme Court Rule 67B(1)(c).

However, we still must address whether the statements contained in the respondent's advertisement are violative of the other proscriptions found in Supreme Court Rule 67B(1)(c). Specifically, we address whether the statements made in the advertisement constitute a pledge or promise by the respondent. After reviewing the advertisements, we conclude that the only questionable statement contained therein relates to the respondent's claim to have "never written an opinion reversing a rape conviction."

In a case similar in many respects to the instant case, the Washington Supreme Court in (*In re Kaiser*, 111 Wash. 2d 275, 759 P.2d 392 (1988) (*en banc*)), considered whether certain statements made by a candidate for judicial office violated the pledges or promises provision of Canon 7(B)(1)(c) of the Washington Judicial Code -- a provision virtually

identical to our Supreme Court Rule 67B(1)(c). In that case, to counter his opponent's campaign, Judge Kaiser stated he was:

> "Toughest on Drunk Driving ... Judge Kaiser's opponent, Will Roarty, receives the majority of his financial contributions from drunk driving defense attorneys. These lawyers do not want a tough, no-nonsense judge like Judge Kaiser."

Another advertisement proclaimed "JUDGE KAISER IS TOUGH ON DRUNK DRIVING..."

The Washington Supreme Court concluded that these two statements:

> "*** single out a special class of defendants and suggest that these DWI defendants' cases will be held to a higher standard when tried before Judge Kaiser ... On the whole these statements promise exactly the opposite of impartial performance of the duties of the office." 759 P.2d at 396.

In the instant case, we find the respondent's statement regarding "having never written an opinion reversing a rape conviction" contravenes Rule 67B(1)(c). Although this statement may be an accurate assessment of the respondent's record as an appellate court judge, it suggests that a higher standard must be met by a defendant charged and convicted of rape whose case is argued before the respondent on review. This is tantamount to an implicit pledge that rape convictions on review have been and will continue to be treated summarily by the respondent.

We also find the respondent's statement regarding never authoring an opinion reversing a rape conviction violates both Supreme Court Rules 61 and

62A. (134 Ill. 2d R. 61, 62A.) The statement runs counter to promoting confidence in the impartiality of the respondent as well as impacting negatively on preserving the independence of the judiciary.

Accordingly, although we find a violation of the Code, it is insubstantial, insignificant, and does not warrant the imposition of a reprimand.
