(No. 90 CC 2.—Respondent reprimanded.)

In re CIRCUIT JUDGE JOHN P. TULLY of the Circuit Court of Cook County, Respondent.

Order entered October 25, 1991.

SYLLABUS

On September 25, 1990, the Judicial Inquiry Board filed with the Courts Commission a seven-count complaint, charging the respondent with willful misconduct in office and 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, while a candidate for the nomination to the office of appellate court judge in the 1990 primary election, authorized and approved improper campaign advertisements and failed to properly oversee his campaign finances.

Count I alleged that the respondent, a sitting judge of the circuit court, was a candidate, in the 1990 primary election, for the Democratic nomination for judge of the First District Appellate Court; that, during the course of the primary election campaign, the respondent approved and authorized a certain campaign advertisement on his own behalf, which was published in the March 19, 1990, issue of the Chicago Tribune; that in the advertisement the respondent made a series of representations, *e.g.*, "Judge Tully—Tough on Crime[.] I went to a disabled Sr. Citizen's home to sign arrest warrants against two home invaders (Southtown Economist 3-7-90). The detective on the scene said, 'without Judge Tully going to see the woman, we wouldn't have made an arrest'" and "Judge Tully—Tough on Taxes[.] I saved Cook County taxpayers $2.5 million in 1989 in decision involving the CTA"; that said advertisement contained statements that were inaccurate, misleading and cast doubt upon his capacity to decide impartially issues that may come before the respondent; and that such conduct violated Supreme Court Rules 67(B)(1)(c) (judicial candidate should not make pledges or promises of conduct in office other than faithful and impartial performance of judicial duties; should not misrepresent qualifications or other facts; etc.), 67(B)(1)(a) (judicial candidate should maintain dignity of judicial office), 61 (judge should maintain high standards of conduct), and 62(A) (judge should comply with the law and always conduct himself in manner that promotes integrity and impartiality of judiciary). Ill. Rev. Stat. 1989, ch. 110A, pars. 61, 62(A), 67(B)(1)(a), (c).

Counts II through VI realleged that the respondent was a judge and a candidate for the appellate court and that he, during the primary election campaign, "authorized and approved" campaign advertisements, and alleged that advertisements appeared in the Chicago Sun Times on March 19, 1990, Southtown Economist on March 19,1990, Chicago Shoreland News on March 17, 1990, The Beverly Review on March 14, 1990, and Chicago Defender on March 19, 1990. These advertisements were very similar to those described in Count I and/or included additional material, *e.g.*, "highly qualified

& endorsed," "[Tully] saved you a CTA fare increase in 1989 on a recent case," or variations of same, and, in Count VI, the advertisement was "'Highly qualified'; trial lawyers group" and "Supports Eugene Pincham, Danny Davis for court office endorsed by many ward committeeman [*sic*]." These counts also realleged that said advertisements were "inaccurate, misleading, and cast doubt" on the respondent's capacity to decide impartially issues that may come before him. Count II through VI alleged that the respondent's conduct violated Supreme Court Rules 61, 62(A), 67(B)(1)(a) and (c), and Count VI alleged also a violation of Supreme Court Rule 67(A)(4) (judge should not engage in any other political activity except to improve law, legal system or administration of justice). Ill. Rev. Stat. 1989, ch. 110A, pars. 61, 62(A), 67(A)(4), 67(B)(1)(a), (c).

Count VII realleged respondent being a judge and a candidate for the appellate court, and alleged that, during the 1990 primary election campaign, the respondent engaged in misconduct: failed to properly establish a committee of responsible persons to manage his campaign finances, issued checks from his personal account rather than campaign committee account for campaign expenses, and engaged in conduct to avoid, circumvent or totally disregard the Illinois campaign disclosure laws (Ill. Rev. Stat. 1989, ch. 46, par. 9—1 *et seq.*); and that the described conduct violated Supreme Court Rules 67(B)(1)(a), 67(B)(2) (judicial candidate should not himself solicit campaign funds but should establish committees of responsible persons), 62(A), and 61. Ill. Rev. Stat. 1989, ch. 110A, pars. 61, 62(A), 67(B)(1)(a), 67(B)(2).

Held: Respondent reprimanded.

After the Judicial Inquiry Board filed Complaint No. 90 CC 2 but before the Courts Commission hearing on the complaint, the respondent was elected judge of the appellate court at the November 1990 general election. See *Tully v. State of Illinois* (1991), 143 Ill. 2d 425.

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

Henslee, Monek & Henslee, of Chicago, for respondent.

Hinshaw & Culbertson, of Chicago, for *amicus curiae* the Illinois Judges Association.

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

ORDER

On September 25, 1990, the Illinois Judicial Inquiry Board (Board) filed a seven-count Complaint with the Illinois Courts Commission (Commission) against the respondent, Circuit Judge John P. Tully. The Complaint charged the respondent with willful misconduct in office and conduct which is prejudicial to the administration of justice and which brings the judicial office into disrepute, in that the respondent authorized and approved improper advertisements in local newspapers and failed to properly oversee his campaign finances.

On October 17, 1990, the respondent filed a motion to dismiss contending the Complaint was legally insufficient and lacked sufficient factual detail. The Commission denied the motion and the respondent filed an answer to the Complaint. Subsequently, the respondent and the Board moved to adopt the respective memoranda of law filed in the pending case of In re Buckley, No. 91 CC 1. Based on the respondent's argument in In re Buckley, the respondent in the instant case filed a motion to dismiss contending counts I through VI of the Complaint unconstitutionally infringed upon his right to free speech. Following a hearing before the Commission, the respondent filed a motion to renew the motion to dismiss. As part of the renewed motion, the respondent contends the Board failed to prove its case.

In addition, the respondent has filed a motion to adopt the brief of *amicus curiae*, submitted by the Illinois Judges Association in In re Buckley. Said motion is hereby granted.

Counts I through VI of the Complaint allege that during the 1990 Democratic primary campaign for the office of Judge of the Appellate Court, the respondent

approved and authorized certain campaign advertisements which "contained statements that were inaccurate, misleading, and cast doubt upon his capacity to decide impartially issues that may come before him." Each of the counts I through VI allege the respondent's conduct violated Illinois Supreme Court Rules 61, 62(A), 67(B)(1)(a) and 67(B)(1)(c). (134 Ill. 2d Rules 61, 62(A), 67(B)(1)(a), 67(B)(1)(c).) In addition, count VI alleges the respondent's conduct also violated Rule 67(A)(4). 134 Ill. 2d R. 67(A)(4).

In particular, count I alleges the respondent approved and authorized a campaign advertisement published on March 19, 1990, in the Chicago Tribune, which contained the following statements:

(1) "Judge Tully—Tough on Crime
I went to a disabled Sr. Citizen's home to sign arrest warrants against two home invaders (Southtown Economist 3-7-90). The detective on the scene said 'without Judge Tully going to see the woman, we wouldn't have made an arrest.'"

(2) "Judge Tully—Tough on Taxes
I saved Cook County Taxpayers $2.5 Million in 1989 in decision involving the CTA."

Count II alleges the same statements—with one exception—were also made in an advertisement published in the Chicago Sun Times on March 19, 1990. The second statement on taxes concluded with the following citation: "(Chicago Daily Law Bulletin, July 1989)".

Count III alleges the respondent approved and authorized a campaign advertisement published in the March 19, 1990, edition of the Southtown Economist, which contained the following statements:

(1) "VOTE FOR
JOHN P.
TULLY
APPELLATE COURT JUDGE"

(2) "IN A RECENT RULING THE ILLINOIS APPELLATE COURT UPHELD JUDGE TULLY'S RULING THAT RESULTED IN SAVING THE TAX PAYERS [*sic*] OF COOK COUNTY $2,500,000 IN 1989 AND A FARE INCREASE FOR CTA USERS
(CHICAGO DAILY LAW BULLETIN—JULY 1989)"

(3) "HIGHLY QUALIFIED & ENDORSED"

Count IV alleges the respondent approved and authorized a campaign advertisement published in the Chicago Shoreland News on March 17, 1990, containing the following:

"Judge Tully—saved you a CTA fare increase in 1989 on a recent case"

Count V alleges the respondent approved and authorized a campaign advertisement published March 14, 1990, in The Beverly Review, which contained the following:

"SAVED TAXPAYERS
$2,500,000 IN 1989"

Count VI asserts the respondent approved and authorized a campaign advertisement published in the Chicago Defender on March 19, 1990, which contained the following statements:

(1) "'HIGHLY QUALIFIED'; TRIAL LAWYERS GROUP".

(2) "SUPPORTS EUGENE PINCHAM, DANNY DAVIS FOR COURT OFFICE ENDORSED BY MANY WARD COMMITTEEMAN [*sic*]".

Separately, count VII alleges the respondent engaged in misconduct with respect to his campaign finances. The Complaint asserts the respondent (1) "failed to properly establish a committee of responsible persons to secure and manage the expenditures of funds for his campaign", (2) "issued checks for campaign expenses

from his personal account rather than from his campaign committee account", and (3) "engaged in conduct calculated to avoid, circumvent, or totally disregard the Illinois Campaign Finance Disclosure Act [*sic*] * * *." The count alleges the respondent's conduct violated Rules 67(B)(1)(a), 67(B)(2), 62(A) and 61. 134 Ill. 2d Rules 61, 62(A), 67(B)(1)(A), 67(B)(2).

Supreme Court Rule 61 (134 Ill. 2d R. 61) provides in pertinent part: "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." Rule 62(A) (134 Ill. 2d R. 62(A)) states: "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." Rule 67(B)(1)(a) (134 Ill. 2d R. 67(B)(1)(a)) provides: "(1) A candidate, including an incumbent judge, for a judicial office filled by election or retention (a) should maintain the dignity appropriate to judicial office".

Besides the general ethical propositions just set forth, counts I through VI allege statements made in the respondent's campaign advertisements violated Rule 67(B)(1)(c) (134 Ill. 2d R. 67(B)(1)(c)), which provides: "(1) A candidate, including an incumbent judge, for a judicial office filled by election or retention * * * (c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his view on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact; provided, however, that he may announce his views on measures to improve the law, the legal system, or the administration of justice, if, in doing so, he does not cast doubt on his capacity to decide impartially any issue that may come before him."

The respondent contends Rule 67(B)(1)(c) violates his constitutional right to free speech. However, the cases relied on by the respondent to support his contention (*American Civil Liberties Union of Florida, Inc. v. The Florida Bar* (N.D. Fla. 1990), 744 F.Supp. 1094, and *J.C.J.D. v. R.J.C.R.* (Ky. 1991), 803 S.W.2d 953) address the disputed legal or political issues clause of Rule 67(B)(1)(c). We find the alleged statements challenged in these proceedings do not constitute pronouncements on disputed legal or political issues. Nor do we view them as pledges or promises. We note the Complaint filed by the Board only alleges the respondent's statements were inaccurate and misleading, and cast doubt upon his ability to be impartial. There is no allegation of pledges or promises, or statements, on disputed legal or political issues. Therefore, we need not address the constitutional arguments of the parties concerning the "pledges or promises" and "legal or political issues" clauses of Rule 67(B)(1)(c).

However, we find three of respondent's statements did violate Rule 67(B)(1)(c)'s prohibition against misrepresenting one's identity, qualifications, present position or other facts.

The advertisement appearing in the Southtown Economist was headed in large print by the phrase "VOTE FOR JOHN P. TULLY APPELLATE COURT JUDGE". We hold this phrase misrepresented the current position held by the respondent. At the time, the respondent was a judge of the circuit court and not a judge of the appellate court. The composition of this statement was misleading and inappropriate in that it implied the respondent was running for retention rather than election.

We find even more misleading the statements, "HIGHLY QUALIFIED & ENDORSED" and " 'HIGHLY QUALIFIED'; TRIAL LAWYERS GROUP", which

appeared respectively in the Southtown Economist and the Chicago Defender. These statements do not identify the persons or organizations, if any, who found the respondent "highly qualified" and endorsed his candidacy. The phrase "trial lawyers group" is not sufficient identification of the organization which allegedly found the respondent highly qualified. The statements as presented were highly misleading to the voting public. Because they lack sufficient factual support, these statements in effect misrepresent the respondent's qualifications.

We do not find that the remaining statements violate the Code of Judicial Conduct. The statements "tough on crime" and "tough on taxes" lie within the realm of general comment and do not rise to the level of a pledge or promise. The respondent's claims concerning savings to taxpayers and CTA users, as a result of a judicial decision the respondent handed down, did not amount to an intentional misrepresentation of the facts. A judicial candidate should, however, be circumspect in making statements which might mislead the voters, or which do not clearly present the facts of a given claim.

The same can be said for the statements concerning the respondent's visit to a senior citizen's home to sign an arrest warrant. The respondent should not have used this example of his judicial activity. Such activity, used in this context, gives the impression it was done for political purposes. Also, there was evidence the quote from the detective was not accurate. We find, however, there was no intentional misrepresentation of the facts. In sum, though we find the respondent exercised poor judgment in approving this statement, we find no violation of the Code.

The Board maintains that in addition to the rules discussed above, the respondent violated Rule 67(A)(4) when he approved and authorized the advertisement

which contained the statement, "SUPPORTS EUGENE PINCHAM, DANNY DAVIS FOR COURT OFFICE ENDORSED BY MANY WARD COMMITTEEMAN [*sic*]". Rule 67(A)(4) provides: "A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice."

The exact meaning of the above cited statement is less than clear. However, we find nothing in the Code which prevents a candidate, who is in a political campaign, from voicing support for other candidates. We do not find that this limited expression of support constitutes political activity prohibited by Rule 67(A)(4). We find the respondent's approval of this campaign statement did not violate the Code.

Count VII of the Complaint charges the respondent with misconduct with respect to his campaign finances. As noted above, the Board maintains the respondent failed to establish a committee to secure and manage the expenditures of his campaign and that he paid for campaign expenses out of a personal account rather than a campaign account. On review of the evidence, we find there may have been technical problems with the manner in which the campaign's finances were handled. However, exactly what occurred is difficult to determine from the evidence before us. Under the evidence presented, it would appear the respondent's actions were in substantial accord with the requirements of article 9 (Disclosure of Campaign Contributions and Expenditures) of the Election Code. Ill. Rev. Stat. 1989, ch. 46, par. 9—1 *et seq.*

We find the evidence presented by the Board sufficient to prove that in three instances, involving statements made in campaign advertisements approved and authorized by the respondent, the respondent violated the Code of Judicial Conduct. We also find no

constitutional issues are raised by the instant disciplinary proceedings. Therefore, the respondent's motion to dismiss and motion to renew his motion to dismiss are denied. In conclusion, we find the respondent's actions tended to bring the judicial office into disrepute, and hereby reprimand the respondent for his violations of the Code of Judicial Conduct.

Respondent reprimanded.