



STATE OF WASHINGTON

## PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112  
Toll Free 1-877-601-2828 • E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) • Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

March 17, 2011

THADDEUS MARTIN  
4928 109<sup>TH</sup> ST SW  
LAKEWOOD WA 98499-3731

Subject: Complaint filed against Kevin McCann, PDC Case No.11-010

Dear Mr. Martin:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint against Kevin McCann received on August 3, 2010 alleging that political advertising sponsored by the McCann campaign, and received by Pierce County voters in the last days of July 2010, violated RCW 42.17 as follows:

- Because the mailing included a photo of Mr. McCann wearing what appeared to be a judicial robe, you alleged that the advertising violated the prohibition in RCW 42.17.530(1)(b) against false claims of incumbency in political advertising.
- Because the photo showed Mr. McCann in what appeared to be a courtroom, you alleged that the mailing demonstrated a violation of the prohibition in RCW 42.17.130 against the use, or the authorization of the use, of public facilities to assist a candidate's campaign.
- Finally, you alleged that the robe in which Mr. McCann was pictured was a public facility, and that its use in the campaign mailing constituted an additional violation of RCW 42.17.130.

As noted in a letter sent to you on August 17, 2010, PDC staff did not investigate your allegation regarding the use of a judicial robe to assist Mr. McCann's campaign. Such use is addressed, and generally allowed, under Opinion 88-3 of the Ethics Advisory Committee, a committee appointed by the Chief Justice of the Washington State Supreme Court. For consistency purposes for all levels of judges, the Commission will defer to the interpretation in Opinion 88-3 for the use of robes in campaign literature for judges subject to RCW 42.17.130.

PDC staff reviewed your allegations in light of the following statutes:

**RCW 42.17.130** prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for

the promotion of, or opposition to, any ballot proposition. This prohibition does not apply to activities that are part of the normal and regular conduct of the office or agency.

**RCW 42.17.530(1)(b)** prohibits any person from sponsoring, with actual malice, political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent, when the representation constitutes libel or defamation per se. . . . Section (2) states, For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

**PDC Interpretation 00-03** states that, per Opinion 88-3 of the Ethics Advisory Committee, a candidate holding a judicial office, and seeking election to a different judicial office, may be pictured in a judicial robe in campaign literature, provided that the caption of the picture accurately indicates the judicial position that the official currently holds. The Interpretation states that a candidate who does *not* hold a judicial office may not be pictured in judicial robes in campaign literature. The Interpretation states that in making this determination, the Commission's intent is to guard against false suggestions of incumbency.

We reviewed your complaint and Mr. McCann's response to the complaint. We also reviewed Opinion 88-3 of the Ethics Advisory Committee, and Interpretation 00-03 of the Public Disclosure Commission. As a result of our review, we found:

- Opinion 88-3 of the Ethics Advisory Committee addresses a specific question, namely whether a district court judge running for a superior court position may be pictured in campaign literature in a judicial robe, if the caption of the picture indicates that the judge is a district court judge.
- Although Opinion 88-3 does not authorize the use of judicial robes by candidates who do not currently hold any elective judicial office, Mr. McCann stated that he relied on the logic of Opinion 88-3 when planning his campaign mailing.
- Accordingly, the photo in Mr. McCann's mailing clearly indicates that he is pictured "*preparing for a case as a pro tem judge.*" In addition, the mailing included seven statements urging the reader to "*elect*" Mr. McCann to the position of District Court Judge, recommending him "*for Judge,*" or as "*the next Judge.*" In addition to including the photo caption discussed above, the mailing included five descriptions of Mr. McCann as a current pro tem judge, and five descriptions of him as a current prosecuting attorney.
- Regarding the facility used for the photo shoot, Mr. McCann was not, despite appearances, actually seated in a public courtroom, but rather in a private mock courtroom he had arranged to use for the purpose of the photo shoot. The facility used was the offices of Trial Arbitration and Mediation Services, located on North Yakima Avenue in Tacoma. The photo used in his campaign mailing was taken

on July 14, 2010, and Mr. McCann stated that he used accumulated vacation leave to be absent from work at the Pierce County Prosecutor's office that day.

Mr. McCann's mailing clearly indicated that he was seeking election to the office of District Court Judge. PDC staff found no evidence that Mr. McCann sponsored political advertising that falsely represented, with actual malice and constituting libel or defamation per se, that Mr. McCann was an incumbent District Court Judge. PDC staff found no evidence that public facilities were used to assist Mr. McCann's campaign.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Kevin McCann.

Thank you for bringing this matter to our attention. The process relies on citizens monitoring campaign activity to promote full compliance with the law. Your actions will contribute to better awareness of the Public Disclosure Law and better public disclosure of important campaign information.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll-free at 1-877-601-2828 or by e-mail at [phil.stutzman@pdc.wa.gov](mailto:phil.stutzman@pdc.wa.gov).

Sincerely,



Doug Ellis  
Interim Executive Director

*c: Kevin McCann*