

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

Robert O. Wilson, DDS, Chair
Wilfred L. Sanders, Jr., Esquire, V. Chair
The Honorable Gary R. Cassavechia
Peter Franklin
TWilliam R. Hall, Jr.
Susan Herney
The Honorable John A. Korbey
Thomas Moses
The Honorable Tina Nadeau
Lawrence W. O'Connell
Dana Zucker, Esquire



Robert T. Mittelholzer, Esquire
Executive Secretary
74 Exeter Road
Newmarket, New Hampshire 03857

Phone: (603) 292-1825
Fax: (603) 292-1827
Email: rmittelholzer@nhjcc.com

August 25, 2011

Justice Robert Stephen, JC-10-066-C and JC-11-003-C

REPRIMAND

Based upon the facts and circumstances surrounding Judge Stephen's self-report (JC-10-066-C), the related grievance filed by Lieutenant Healey of the City of Manchester Fire Department, the Committee's own investigation of these matters (which included but was not limited to Judge Stephen's recorded statement under oath) and pursuant to Judge Stephen's stipulated violation of Canons 2 A, 2 B and 5 A (3) of the Code of Judicial Conduct, the Committee has voted to publicly sanction Judge Stephen for his violation of Canons 2 A, 2 B and 5 A (3) by way of this Reprimand.

I. FINDINGS OF FACT

Based upon the self-report of Judge Stephen of November 3, 2010 with supporting material (the "Stephen Complaint"); Judge Stephen's response to this complaint of December 3, 2010; the grievance filed by Lieutenant Kevin Healey of the Manchester Fire Department of January 10, 2011 together with supporting materials (the "Healey Complaint"); Judge Stephen's response to the "Healey Complaint" of March 7, 2011; and, the results of the preliminary investigation conducted by Committee counsel, Lincoln T. Soldati, Esq., pursuant to Supreme Court Rule 40 (8) (a), (which investigation included but was not limited to interviews of: Lieutenant Kevin Healey of the Manchester Fire Department; Manchester Firefighter Dennis Collins; Manchester Fire Chief James Burkush; Joseph Levasseur; Manchester Mayor Ted Gatsas; Jamie

Richardson; and, Maurya Tollefson), the Committee has determined that there exists clear and convincing evidence to support the following facts:

1. At all times relevant to these proceedings, Judge Robert Stephen was a part-time Justice of the District Court of the State of New Hampshire.
2. On October 29, 2010 at approximately 10:00 PM, Kevin Healey, a Lieutenant with the Manchester Fire Department was off duty and working as a volunteer for the New Hampshire Democratic Party placing political signs in the area of Wellington Road in Manchester. He was assisted in this task by Maurya Tollefson and Jamie Richardson both of whom were also working for the Democratic Party. The political signs being posted read, "Stop Stephen's Property Tax Hike."
3. The signs referred to John Stephen, Esq., the Republican gubernatorial candidate in the upcoming election taking place on Tuesday, November 2, 2010, and the brother of Judge Robert Stephen.
4. The area in which the signs were being posted contained numerous other political signs from both political parties and nearly every candidate including those for United States Senate and Congressional races, the Governor's race, and many state and local political campaigns.
5. At some point between 10:00 and 10:30 PM a car drove up next to where Mr. Healey was parked. When the other car pulled up, Maurya Tollefson was in the back seat of Mr. Healey's vehicle, Jamie Richardson was across the street putting up signs, and Kevin Healey was in the driver's seat.
6. Mr. Healey recognized the driver of the other vehicle as Judge Stephen, with whom Mr. Healey had gone to high school. When Judge Stephen was confirmed as a district court judge, Mr. Healey had called Judge Stephen to personally congratulate him. Mr. Healey rolled down his window and heard Judge Stephen yelling at him to, "stop telling lies about my brother", and advised Mr. Healey that what he was doing was "illegal." Judge Stephen also made a reference to contacting the police.
7. While Mr. Healey asserted that Judge Stephen utilized vulgar language and was highly agitated, Judge Stephen denies using vulgar language.
8. Although Maurya Tollefson was in the back seat of Healey's vehicle, she did not hear the specific words spoken by Judge Stephen but described the other driver as yelling at Healey. She described Healey as very calm and responding to the other driver by repeating "okay" several times in a soft, calm voice. She estimated the length of the entire encounter to be no more than 30 seconds. She could not confirm the use of foul or abusive language by the other driver. She did not recognize or know the other driver.

9. Jamie Richardson was across the street at the time of the encounter and he observed a vehicle slow down and stop across from where Healey was parked. He could hear the other driver yelling and calling out Kevin Healey's name. He was not able to hear specifically what was being said other than hearing "Kevin" being shouted by the other driver; nor was he able to see the other driver. When he returned to Healey's vehicle, Healey told him, "that was Robbie Stephen, he told me 'to stop spreading lies about my brother' or he would call the cops."

10. Within approximately fifteen minutes of the encounter, Lieutenant Healy received a text from Dennis Collins, a Manchester firefighter at the Mammoth Road fire station, which read: "some guy just stopped by, rang the doorbell, said he was calling the police on you, would not leave name, but said you would know him."

11. Dennis Collins reported that he was at the station when he heard the doorbell ring. Collins assumed that it was someone reporting a fire or other emergency. When he answered the door the person began saying "Kevin Healey is putting up signs illegally." The person at the door was Judge Stephen but would not identify himself despite being asked to do so several times. Judge Stephen kept insisting on speaking with Kevin Healey. Collins repeatedly explained that Lieutenant Healey was not there, but Judge Stephen kept insisting that Healey was there and suggested that Collins was covering up for Healey. Collins describes Judge Stephen as very irate and reported that Judge Stephen kept saying that he was going to call the police.

12. Later that evening, Judge Stephen called Manchester Attorney Joseph Levasseur. He indicated that he wanted advice and to find out if his belief that the placement of the signs violated state law was correct. According to Judge Stephen, Mr. Levasseur is a long-time acquaintance and an attorney knowledgeable in the election law area. Judge Stephen stated that Mr. Levasseur confirmed that the signs were illegally placed and forwarded a statute to him. Upon further reflection, Judge Stephen indicated that he decided not to contact the police and his involvement ended.

13. Mr. Levasseur confirmed that he had received a telephone call from Judge Stephen the night of the incident asking whether the posting of political signs on public property was legal. Mr. Levasseur stated that he advised Judge Stephen to take photographs so as to have evidence of the incident. Mr. Levasseur further stated that Judge Stephen did not tell him that he had traveled to the fire station to see if Healey was working that evening. Mr. Levasseur said that posting the signs on public property was illegal and emailed a copy of the statute to Judge Stephen.

14. On October 30th, Kevin Healey called Chief Burkush of the Manchester Fire Department to advise him of the incident with Judge Stephen occurring the night before. Later in the day Chief Burkush received a telephone call from Mayor Ted Gatsas who was inquiring whether or not Kevin Healey was on duty the night of October 29th. Chief Burkush informed the Mayor that Lieutenant Healey was not on duty the evening of October 29th.

15. Mayor Gatsas indicated that he had received a call from Joe Levasseur sometime on Saturday October 30th asking the Mayor to find out if Lieutenant Healey was on duty the night before. He confirmed that he had placed a call to Chief Burkush concerning that information. Mayor Gatsas also stated that he never spoke with Judge Stephen about the incident or Lieutenant Healey's on-duty status.

16. Joseph Levasseur identified himself as being very active in Republican politics. He stated that he viewed the incident as a potential opportunity for political advantage. Mr. Levasseur stated that it was his idea to call the Mayor concerning Lieutenant Healey's on-duty status. Mr. Levasseur stated that Judge Stephen was not involved in that decision.

17. Mr. Levasseur used the incident for political purposes in blogs and press releases prior to the election and continued to do so even after the election by referencing the "illegal" activity of posting political signs on public property by a Manchester firefighter on his public access television program. None of the activity referenced in the blogs, and Levasseur's cable access TV show, identified or alluded to Judge Stephen. The original source of this information came from Judge Stephen in his phone call to Mr. Levasseur inquiring about the legality of the sign placement.

18. Lieutenant Healey stated that there were postings on "RedHampshire.Com" the day after the incident concerning a high ranking Manchester Fire Department official illegally distributing signs, and that the site indicated that an investigation would be conducted, with his job in jeopardy. He also asserts that a few days later he was the target of negative commentary on the "Two Joe's Show", co-hosted by Mr. Levasseur and aired on Manchester public access television.

19. The Manchester Edition of the New Hampshire Union Leader printed a story concerning the spouse of a Democratic state senator who was apparently removing campaign signs produced by the New Hampshire Republican Party. The article also indicated that the New Hampshire Democratic Party issued a separate statement involving campaign signs stating that "District Court Judge Robert Stephen, the brother of Republican gubernatorial candidate John Stephen, threatened a campaign volunteer in Manchester with arrest Friday night for posting campaign signs on public property, despite that (sic) fact that Stephen's campaign has placed hundreds of signs on public property throughout New Hampshire."

II. RULINGS OF LAW

The Respondent and the Judicial Conduct Committee stipulate that the following Canons of the Code of Judicial Conduct were violated by clear and convincing evidence:

Canon 2A

Failure to Avoid Impropriety and the Appearance of Impropriety by Not Acting at all Times in a Manner that Promotes Public Confidence in the Judiciary

20. Factual findings as set forth in Section I above are incorporated by reference.
21. Public confidence in the judiciary is promoted by responsible and proper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and expect to be the subject of constant scrutiny and must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.
22. The prohibition against behaving with impropriety applies to both the professional and personal conduct of a judge, both on and off the bench.
23. At the time of his initial contact with Mr. Healey on October 29, 2010, Judge Stephen's demeanor was confrontational and angry. He threatened police involvement. This behavior continued at the fire station.
24. Although protesting the legality of the sign placement, given the sign content, and the relationship of the judge to the candidate, as well as the proximity of the election, under an objective standard, a reasonable person would conclude that the confrontation was personal in nature and politically motivated.
25. Judge Stephen should have recognized that his contact with Mr. Levasseur, while seeking information about the legality of sign posting would also appear to be geared to political ends as later events demonstrated.
26. In addition to the inappropriate personal conduct, political activity by a judge, except on behalf of measures to improve the law, the legal system or the administration of justice are prohibited by Canon 5A(3) of the Code of Judicial Conduct.
27. This conduct constitutes impropriety and the appearance of impropriety and is a violation of Canon 2A of the Code of Judicial Conduct.

Canon 2B

Failure to Avoid Impropriety and the Appearance of Impropriety by Allowing Family, Social, Political or Other Relationships to Influence the Judge's Judicial Conduct or Judgment, and Lending the Prestige of Judicial Office to Advance the Private Interests of the Judge or Others.

28. Factual findings as set forth in Section I above are incorporated by reference.

29. Public confidence in the judiciary is promoted by responsible and proper conduct by judges. A judge must avoid all impropriety and appearance of impropriety and expect to be the subject of constant scrutiny and must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

30. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others.

31. The prohibition against behaving with impropriety applies to both the professional and personal conduct of a judge, both on and off the bench.

32. At the time of his initial contact with Mr. Healey on October 29, 2010, Judge Stephen did not identify himself as a judge. Mr. Healey, however, knew he was a judge and that Judge Stephen was aware of that knowledge. Mr. Healey was also aware that the person who came to the fire station shortly thereafter was Judge Stephen, and that Judge Stephen was the brother of candidate John Stephen.

33. The contact between Judge Stephen and Mr. Healey was specifically initiated for the purpose of seeking removal of signs being placed by Mr. Healey, and termination of his efforts to place additional signs in other public places.

34. A judge holds a position of esteem and authority in the community. Due to the source, Judge Stephen's conduct and threat that he would contact law enforcement if the signs were not removed, carry additional weight, inherent legitimacy and greater cause for concern to the recipient, thereby increasing the prospect of compliance.

35. Given that the person seeking the removal of the signs was a judge, coupled with the negative sign content, and the relationship of the judge to the candidate, under an objective standard, a reasonable person would conclude that the judge was allowing his family and political relationships to influence his conduct, and lending the prestige of his judicial office to advance the private interests of his brother.

36. This conduct constitutes impropriety and the appearance of impropriety and is a violation of Canon 2B of the Code of Judicial Conduct.

Canon 5A(3)

A Judge Shall Not Engage in Any Other Political Activity Except on Behalf of Measures to Improve the Law, the Legal System, or the Administration of Justice.

37. Factual Findings as set forth in Section I above are incorporated by reference.

38. The contact between Judge Stephen and Mr. Healey on October 29, 2010 was specifically initiated for the purpose of seeking removal of signs being placed by Mr. Healey, and termination of his efforts to place additional signs in other public places.
39. The signs referred to John Stephen, the Republican gubernatorial candidate in the upcoming election taking place on Tuesday, November 2, 2010, and the brother of Judge Robert Stephen.
40. Although protesting the legality of the sign placement, given the sign content, and the relationship of the judge to the candidate, as well as the proximity of the election, under an objective standard, a reasonable person would conclude that the confrontation was personal in nature and politically motivated.
41. Judge Stephen should have recognized that his contact with Mr. Levasseur while seeking information about the legality of sign posting would also appear to be geared to political ends as later events demonstrated.
42. Except on behalf of measures to improve the law, the legal system or the administration of justice, a judge may not engage in political activity.
43. This conduct constitutes prohibited political activity and is a violation of Canon 5A(3) of the Code of Judicial Conduct.

III. DISPOSITIONAL ANALYSIS

After determining the existence of clear and convincing evidence supporting the finding of a violation of Canons 2A, 2B, and 5A(3) of the Code of Judicial Conduct by Judge Stephen, the Committee examines the factors identified by the New Hampshire Supreme Court pursuant to its decision In Re: Coffey's Case, 949 A.2d 102 (NH 2008) in determining a sanction.

Specifically, the Committee considered the nature of the misconduct, the extent of the misconduct, the judge's culpability, the judge's conduct in response to the Committee's inquiry and disciplinary proceedings, and the judge's reputation and record on the bench.

a. The Nature of the Misconduct:

The conduct involved did not occur in the judge's official capacity. Misconduct on the bench is more serious than the same conduct off the bench. Judge Stephen states that he approached Mr. Healey in an emotional state and inappropriately involved himself in what would be perceived as a political matter. He states that he sought information from Mr. Levasseur about the legality of the sign posting, but also states that he did not intend or request Mr. Levasseur's subsequent actions. The misconduct occurred on a

single night, was for the most part spontaneous, was not the product of lengthy deliberation, and is therefore less serious than it otherwise might have been. Although a violation of Canon 2B was found, there was no basis to infer that Judge Stephen intended to use his status as a judge for personal benefit.

b. The Extent of the Misconduct:

The Committee determined that the misconduct at issue on the part of Judge Stephen was in the nature of an isolated instance and was not part of any identifiable pattern or course of conduct. This misconduct did not take place over a significant period of time. Although there was media coverage concerning the events, as the conduct did not occur in Judge Stephen's official capacity, the misconduct does not appear to have caused any direct harm upon the public's general perception of, or the fairness of, the judicial system. The Committee is mindful however, that Mr. Healey believes that the incident was a personal attack on his freedom to express his political beliefs, and his career as a firefighter, as well as his good name and that of the Manchester Fire Department.

c. The Judge's Culpability:

The evidence suggests strongly that Judge Stephen became angry and reacted impulsively upon witnessing Lieutenant Healey's placement of certain political signs on October 29, 2010, and that Judge Stephen's dissatisfaction was all directed at a particular political operative and about the content of a particular political sign on the eve of a contested election in which Judge Stephen's brother was running for Governor of the State of New Hampshire. Although the Committee remains particularly concerned that Judge Stephen threatened to call the police, the Committee accepts the Judge's representation that the remark was made spontaneously and in the heat of anger.

The Code of Judicial Conduct is clear that, except for several specifically delineated exceptions, political activity by a judge is prohibited. In light of this prohibition, and the candidacy of his brother, the Committee is cognizant of the unique concerns this might present for Judge Stephen. In all other respects, Judge Stephen maintains, and the Committee has no evidence to the contrary, that he has scrupulously remained distant from his brother's campaign. Of importance is a letter received by the Committee from Justice Edwin Kelly, Administrative Justice of the District Court, and Judge Stephen's immediate supervisor. The letter makes clear that Judge Stephen has routinely sought advice from Judge Kelly concerning his responsibilities under the Code relating to political activity. It evidences both Judge Stephen's knowledge of its

provisions and his previous diligence in attempting to conform his individual conduct to those requirements.

d. The Judge's Conduct in Response to the Committee's Inquiry and Disciplinary Proceedings:

Judge Stephen self-reported the incident of October 29, 2010 by letter dated November 3, 2010. Judge Stephen's responses earlier in the process, however, were defensive, somewhat emotional and showed insufficient recognition of how his personal conduct that evening would reasonably be subject to fair criticism. The Committee is encouraged that he has recognized and apologized for allowing his emotions and family ties to dictate his behavior that evening. He has now accepted responsibility for his actions by stipulating to the above violations and resolving these violations consistent with this disposition.

e. The Judge's Reputation and Record on the Bench:


The Committee recognizes that Judge Stephen has had no prior disciplinary history as a district court judge since his appointment to the bench in 2004.

IV. DISCIPLINE

Upon a finding that Judge Stephen has violated Canons 2A, 2B and 5A(3) of the Code of Judicial Conduct, based on the above analysis, the Committee finds that the violations are not of a sufficiently serious nature to warrant the imposition of formal discipline by the court. Pursuant to Supreme Court Rule 40(8)(f), and with the consent of Judge Stephen, the Committee issues a Reprimand. The Committee urges that Judge Stephen be more mindful of the implications of his personal as well as professional conduct and remarks going forward in light of his office and its attendant obligations.

Judge Stephen shall also reimburse the Committee for all costs associated with the investigation and resolution of this matter.

State of New Hampshire Judicial Conduct Committee

By: 
Robert O. Wilson, DDS, Chair