



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 19-0583

**PUBLIC WARNING
(*NUNC PRO TUNC*)**

**HONORABLE KEN MOLBERG
FORMER JUDGE, 95TH CIVIL DISTRICT COURT¹
DALLAS, DALLAS COUNTY, TEXAS**

During its meeting on October 5-7, 2020, the State Commission on Judicial Conduct concluded a review of the complaint received against the Honorable Ken Molberg, formerly the judge of the 95th Civil District Court, Dallas, Dallas County, Texas. Justice Molberg was advised by letter of the Commission's concerns and provided written responses to the Commission's written questions. On October 6, 2020, Justice Molberg elected to appear before the Commission and gave testimony. After considering the evidence before it, the Commission entered the following findings and conclusions:

BACKGROUND

During his 2018 campaign for the Fifth Court of Appeals, Judge Molberg's name, judicial title, and likeness appeared on a door hanger advertising his campaign and the campaigns of four other candidates from the Democratic Party who were running for non-judicial public offices: John Creuzot, candidate for Dallas County District Attorney; Marian Brown, candidate for Dallas County Sheriff; Nathan Johnson, candidate for Texas State Senate, District 16; and John Turner, candidate for Texas House of Representatives, District 114 (the "Door Hanger").

The Door Hanger, which Justice Molberg told the Commission was produced and distributed by the Democratic Unity Campaign of Dallas County, a political action committee (the "PAC"), featured pictures of and short bios about each of the candidates, contact information for their individual campaigns, and a disclaimer stating "Pol. Adv. Paid by" each individual candidate's campaign.

¹ Judge Molberg was elected to be a justice of the Fifth Court of Appeals, Dallas, Texas and took office in January of 2019.

In his appearance before the Commission, Justice Molberg testified that he gave money to the PAC to support its “get out the vote” campaign on behalf of Democratic candidates in Dallas County and authorized the PAC to use his name, title, bio, and likeness on printed materials promoting same. Justice Molberg said he gave the PAC “free rein” and exercised no control over how his name, title, and/or likeness would be used, including with respect to the individual campaigns of other candidates. Justice Molberg testified the political campaign advertisement containing his name and likeness as part of the Door Hanger included a disclaimer that it was a paid political advertisement by his campaign, as he wanted people to know it was him making the advertisement and not other people.

Justice Molberg further indicated he did not review any of the materials produced by the PAC before they were disseminated and was unaware the Door Hanger existed until receiving the Commission’s inquiry about this matter. Justice Molberg also testified he was aware that his name and bio would likely appear on advertisements with those of non-judicial candidates as a result of his payment to the PAC, as this commonly occurred. Justice Molberg expressed his belief that the Door Hanger did not violate any ethical canon because, where political campaigns are concerned, judges can promote themselves, judges can promote their political party, and their political party can promote judges.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Ken Molberg was the judge for the 95th Civil District Court, Dallas, Dallas County, Texas.
2. During his 2018 campaign for the Fifth Court of Appeals in Dallas, Texas, Justice Molberg authorized and paid the PAC for his name, title, and likeness to appear in political campaign advertisements supporting his campaign and the campaigns of other candidates for public office.
3. The Door Hanger was produced and publicly distributed by the PAC and stated it was a paid political advertisement of Justice Molberg’s campaign and the four other non-judicial campaigns.
4. Justice Molberg authorized the PAC’s unfettered use of his name, title, bio, and likeness on printed campaign materials that also promoted other candidates for non-judicial public office.
5. Justice Molberg authorized the use of his name, title, and likeness to appear on the Door Hanger, which was a joint-campaign advertisement with four non-judicial candidates for public office.

RELEVANT STANDARDS

1. Canon 2B of the Texas Code of Judicial Conduct provides that a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.
2. Canon 5(2) of the Texas Code of Judicial Conduct provides that a judge shall not authorize the public use of his or her name endorsing another candidate for non-judicial public office.

CONCLUSION

The Commission concludes from the facts and evidence presented that Judge Molberg should be publicly warned for lending the prestige of his judicial office to advance the private interests of other candidates for non-judicial public office featured on joint political campaign advertisements and for authorizing the use of his name endorsing such non-judicial candidates’ campaigns, by authorizing the

PAC to use his name, bio and likeness in such manner without any restriction or oversight on his part, in violation of Canons 2B and 5(2) of the Texas Code of Judicial Conduct.²

The Commission has taken this action pursuant to the authority conferred it in Article V, §1-a of the Texas Constitution in a continuing effort to protect the public and promote public confidence in the judicial system.

Issued this the 3rd day of December, 2020.



David Hall
Chairman, State Commission on Judicial Conduct

² The Commission notes that Justice Molberg’s conduct took place prior to the Legislature’s passage of an amendment to the Judicial Campaign Fairness Act, and the Texas Supreme Court’s addition of a Comment to both Canons 2B and 5(2), each of which provide that “joint campaign activities” by two or more **judicial** candidates are not prohibited. *See Tex. Elec. Code §253.1612 & Tex. Code of Judicial Conduct, Comment to Canons 2 & 5.* However, the Commission also notes that neither of the above-referenced changes applies to joint campaign activities between judicial candidates and non-judicial candidates, and certainly not judicial candidates and non-judicial candidates who would be likely to come before those judicial candidates’ courts (e.g., prosecutors and/or law enforcement officers).