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August 1, 2008

Vidal Marino Velis
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Jorge E. Cueto
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In Re: Complaint filed with the Dade County Bar Association Judicial Campaign Practices Commission on July 21, 2008, by Vidal Marino Velis against Jorge E. Cueto

Dear Mr. Velis:

The Judicial Campaign Practices Commission of the Dade County Bar Association (the "Commission")¹ has reviewed the complaint and exhibits received on July 21, 2008, filed by Vidal Marino Velis² against Mr. Cueto, attorney Jose Herrera's July 28, 2008 response and exhibits on behalf of Mr. Cueto and adopted by Mr. Cueto³ the Commission's July 29, 2008, letter (requesting factual clarification) to Mr. Velis and Mr. Velis's July 30, 2008, letter and exhibits (responding to the Commission's request for clarification).

Set forth below, in order of the complaint, are Mr. Velis's nine (9) allegations, Mr. Cueto's response to each of the nine allegations, Mr. Velis's reply and the

¹ Commission member Don Horn recused himself from this matter.

² Mr. Velis is the husband of Josie Velis, Mr. Cueto's opponent in this race.

³ Mr. Cueto sent an e-mail on July 28, 2008, notifying the Judicial Campaign Practices Commission he was adopting his counsel's submission.

Commission's advisory opinion as to each allegation, based on careful consideration of the three (3) submissions, the applicable law, and Code of Judicial Conduct (Code) and the Dade County Bar Association Pledge (Pledge).

The Pledge provides that the candidate who signs it will, among other things, abide by the Code of Judicial Conduct in all respects, personally assume responsibility for all materials, advertisements and translations prepared for distribution by the campaign and "take immediate, affirmative steps to disavow and request the withdrawal of improper advertisements" within "48 hours of learning of improper advertisements."

Alleged Violation 1

Complaint made by Vidal Marino Velis

Mr. Velis alleges that on July 19, 2008, Mr. Cueto distributed to attendees at a political function, his campaign hand fan, that improperly portrays Mr. Cueto as a Circuit Court judge.

Response of Jorge E. Cueto

Mr. Cueto admits that originally there was a printing error on the hand fans – because the term "for" was omitted before the words "circuit judge.". However, he asserts that prior to distribution, the error was discovered and corrected by affixing a brightly colored sticker with the word "for" before the phrase "Circuit Judge." Mr. Cueto asserts that "although possible, it is improbable that any of the hand fans left the control of the campaign organization prior to correction." Mr. Cueto further states that "it is however, possible that the sticker/applique with the term "for" could have fallen off, or more likely, have been intentionally removed."

Vidal Marino Velis's Reply to Jorge Cueto's Response

Mr. Velis claims that on July 19, 2008, he received one of the uncorrected hand fans at a political luncheon. He also says that he more than fifty people receive the same uncorrected hand fan. Mr. Velis asserts that the hand fan he received never had a sticker adhered to it.

Advisory Opinion of the Commission

The Commission unanimously finds as follows:

Although it is uncontested Mr. Cueto's hand fans had a printing error, whether any of those uncorrected hand fans were distributed is in dispute. When first printed, the word "for" was not included and therefore his hand fans read "Vote for Jorge E. Cueto, Circuit Judge." Mr. Cueto asserts that prior to any distribution, the hand fans were manually corrected by affixing a brightly colored sticker with the word "for."

Mr Cueto's response is not an unequivocal denial of the allegations. He concedes that it is "possible" but "improbable" that any uncorrected fans were distributed. In addition, he offers two theories, neither based upon any evidence, as to how someone could be in possession of the "uncorrected" fans: the corrective stickers either fell off or someone intentionally removed them. The second theory, which, according to Mr. Cueto, is "more likely," is an unsupported accusation of wrongdoing which seems designed to imply that someone associated with the Velis campaign was responsible for the absence of the corrective stickers.

Based upon the Operating Procedures governing the Commission, the Commission cannot undertake an independent investigation and is unable to make a determination where the operative facts are in dispute. Therefore, as to this Allegation, the Commission cannot render an Advisory Opinion.

However, the Commission unanimously agrees that it is inappropriate for a judicial candidate to make or imply an unfounded allegation against an opponent. Such action demeans the candidate, the process and the judiciary. The Commission has previously admonished candidates who treat judicial campaigns like political campaigns, where mudslinging is not only acceptable, but commonplace. The Commission will continue its mission of trying to improve the quality of judicial campaigns so that respect for the bench and bar can be heightened, not lost.

Alleged Violation 2

Complaint made by Vidal Marino Velis

Mr. Velis alleges that on July 19, 2008, at a political event, Mr. Cueto's palm cards were being distributed without the proper disclaimer on them.

Response of Jorge E. Cueto

Mr. Cueto states that the photocopied palm card attached to Mr. Velis's complaint was not the same one produced and distributed by his campaign. Mr. Cueto provided a photocopy of his palm card and states that his palm cards included the proper disclaimer. However, Mr. Cueto admits that some of his Spanish/English palm cards contained the disclaimer only on the Spanish language side and not on the English side. Mr. Cueto states that *all* of those palm cards were corrected by affixing a printed sticker/applique to each palm card and that *none* of those palm cards were distributed and they never left the control of the campaign organization. Unlike his response to Allegation 1, Mr. Cueto does not concede the possibility that some uncorrected cards were distributed.

Vidal Marino Velis's Reply to Jorge Cueto's Response

Mr. Velis asserts that he is in possession of large and small palm cards without the correct disclaimer. He says he came into possession of the large palm card while

attending the same event of July 19, 2008. Mr. Velis also contends that he saw the same palm cards without the proper disclaimer at all of the tables. He says he received the small palm card at a breakfast at La Carreta in the early days of the campaign. The palm cards in his possession never contained a corrective sticker.

Advisory Opinion of the Commission

The Commission is confronted with a factual dispute and is therefore unable to render an advisory opinion as to this allegation. However, the Commission notes that the two factual scenarios proffered by each candidate seem mutually exclusive. In other words, it seems highly unlikely that both versions could be completely accurate.

Alleged Violation 3

Complaint made by Vidal Marino Velis

Mr. Velis alleges that on July 19, 2008, he looked at Mr. Cueto's website, <http://www.jorgecuetojudge.com>, and saw what seemed to be a magazine article interview of Mr. Cueto. According to Mr. Velis, the statements in the magazine are unbecoming of a candidate for judicial office. Mr. Cueto stated in the interview that "Putting bad people away is very gratifying. Do you know what it is to go home knowing that there are 14 fewer employees cheating the City of Miami," and "Sitting on the bench would be another fit, he believes, "because I genuinely care about this community. This is my home, and I want to make it a better place."

Response of Jorge E. Cueto

According to Mr. Cueto, he gave the magazine interview in July 2007, when he was an Assistant State Attorney, handling the case of the City of Miami employees accused of, and arrested for, defrauding the City. Mr. Cueto notes that he was not a candidate for judicial office when the interview was provided. The questions for the interview were chosen by the author and editor of the publication. The article demonstrates the distinction articulated by Jorge Cueto between the prosecutorial and judicial role. Although Mr. Cueto does not believe he violated any canon, he removed this interview from his website.

Authority

Canon 7(A)(3)(d)(i) of the Florida Code of Judicial Conduct states that a candidate for judicial office, "shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office."

Canon 7(A)(3)(d)(i) of the Florida Code of Judicial Conduct states that a candidate for judicial office, "shall not make statements that commit or appear to commit the

candidate with respect to cases, controversies or issues that are likely to come before the court.”

Advisory Opinion of the Commission

As to allegation 3 in the complaint, the voting members of the Commission unanimously find Mr. Cueto violated both Canon 7 and the Pledge. It clearly is a violation of both the letter and spirit of the Canon and the Pledge to post on a website dedicated to a judicial election campaign an interview that includes language such as “Putting bad people away is very gratifying.”

Although the interview was given before he was a candidate, Mr. Cueto was not obligated to put it on his website. To the contrary, Mr. Cueto voluntarily *chose* to put it there. In effect, he is renewing and republishing those comments again now, during the campaign – when he is not supposed to be making these types of statements.

Alleged Violations 4 and 5

Complaint made by Vidal Marino Velis

Mr. Velis alleges that on July 19, 2008, he looked at Mr. Cueto’s website, <http://www.jorgecuetoforjudge.com>, and found that three of Mr . Cueto’s website pages did not contain any political disclaimers.

Response of Jorge E. Cueto

The campaign reviewed the website and did not find the omission. The campaign was advised that there are possible glitches that prevent the webpage template from fully loading.

Vidal Marino Velis’s Reply to Jorge Cueto’s Response

Mr. Velis asserts that on July 20, 2008, he obtained a paper copy of the website screen prints without the required disclaimer. The paper copy was before the additions and changes were made to the website this week.

Advisory Opinion of the Commission

Based upon the response and a review of the website and the material provided by the complainant, the Commission unanimously finds no violation. The disclaimer was observed on the website as well on at least one of the pages of the material provided by the complainant.

Alleged Violation 6

Complaint made by Vidal Marino Velis

Mr. Velis alleges that on July 19, 2008, he looked at Mr. Cueto's website, <http://www.jorgecuetoforjudge.com>, and found that six pages of Mr. Cueto's website did not contain the proper political disclaimer.

Response of Jorge E. Cueto

The incorrect disclaimer⁴ was used at one point, however this disclaimer has been corrected and the updated disclaimer is on all webpages.

Advisory Opinion of the Commission

Mr. Cueto concedes he used the wrong disclaimer, one that four (4) years ago would have been proper. Candidates for all offices, particularly judicial office, must know the current law that governs campaigns. The Commission unanimously finds a violation by Mr. Cueto as to this allegation.

Alleged Violation 7

Complaint made by Vidal Marino Velis

Mr. Velis charges that Mr. Cueto's yard signs did not contain the correct political disclaimer.

Response of Jorge E. Cueto

Mr. Cueto contends that only the first few yard signs contained an incorrect political disclaimer, but they were never distributed. Mr. Cueto unequivocally asserts that a sticker was affixed to each and every yard sign before they were distributed.

Advisory Opinion of the Commission

Based upon the factual dispute, the Commission cannot render an opinion as to this allegation.

⁴ The disclaimer used was the disclaimer prior to the 2004 legislative amendment.

Alleged Violation 8 & 9

Complaint made by Vidal Marino Velis

Mr. Velis claims that Mr. Cueto violated Florida Elections law by allowing a supporter to use the <http://www.cybercrimesdefense.com> website to place a political advertisement requesting campaign funds without the required political disclaimer. Mr. Velis also alleges that Mr. Cueto allowed a supporter to use the internet and send a fund-raising invitation that requested campaign funds without the required disclaimer.

Response of Jorge E. Cueto

Mr. Cueto claims that <http://www.cybercrimesdefense.com> is not a website for the Jorge Cueto for Circuit judge campaign organization, but, rather, it belongs to David Seltzer, Esq., an admitted supporter of his judicial candidacy. Mr. Cueto states that the campaign organization had nothing to do with the advertisement on the website or the invitation to the fund-raiser. Further, Mr. Cueto states that he had no knowledge of the ad's content or of the invitation..

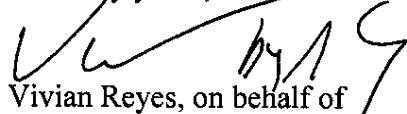
Advisory Opinion of the Commission

The Committee unanimously finds Mr. Cueto violated the Pledge. The advertisement, which did not contain the necessary disclaimer, is not in compliance with the law. Under the Pledge, which Mr. Cueto signed, he was required to take affirmative steps to stop and correct the impropriety.

Judicial candidates have a higher duty than candidates for other offices. The respect of and for the judiciary and the legal profession is at stake in each judicial election. It simply is not enough that a candidate disavows knowledge of, and responsibility for, improper advertisements by those who are supporting the candidate. If one wants to run for judge in Miami Dade County and signs the Pledge to run a clean and professional campaign, one has the duty to stop and correct those supporters who are violating a Canon or the Pledge.

Jonathan Goodman (Chair), David Rothman (Vice Chair), Leslie Smith, Vivian Reyes, and Raul Chacon (Don Horn recused himself) participated in this matter.

Sincerely yours,



Vivian Reyes, on behalf of
The Dade County Bar Association
Judicial Campaign Practices Commission