



FOR IMMEDIATE RELEASE
Contact:

October 28, 2008
Joan Elliott
(518) 346-4414

**FINDINGS IN THE COMPLAINT OF
Kurt Mausert against the Hon. Courtenay Hall
COMPLAINT 2008-12**

Fair Campaign Practices for the Capital Region, Inc. (FCP) held a hearing on October 27, 2008, to consider a complaint made by Kurt Mausert, candidate for Saratoga Family Court Judge, against his opponent, sitting Family Court Judge Courtenay Hall. Hearing Panel members present were: Katie Henrikson (Chair), Jean Wilkinson, Aimee Allaud, Maryann Lettau, and Michael Foster, along with FCP President Joan Elliott and Coordinator Betsey Swan.

Kurt Mausert appeared to present his complaint. Judge Hall responded to the complaint in a letter dated October 26, 2008, which was presented by his attorney Jim Towne.

Mr. Mausert complained that Courtenay Hall violated FCP Principle One by refusing to engage in a face-to-face debate. On October 12 Mr. Mausert sent a letter to Judge Hall's campaign manager, in which he issued his third "challenge" to a debate. The letter provided, among other things, that, "As an added safeguard, two moderators could conduct the debate and screen any questions from the audience. Judge Hall could pick one (you, for instance), and I could select one (Rich Moran, Esq., my Committee Chairperson & an attorney)." The letter further proposed, "The format could consist of opening statements (5 minutes), each candidate posing questions for his opponent, and questions from the audience screened by the moderators. If you have another format in mind, I am open to discussing it." A response was requested by noon on October 15. Judge Hall did not respond to the request for a debate. His attorney delivered a letter at the hearing, in which Judge Hall claimed, "his specious rules offer no assurance against violations of the canons of judicial ethics."

FINDING: NO UNFAIR CAMPAIGN PRACTICE

This is the second FCP complaint arising out of Judge Hall's failure to debate. As we noted in our prior decision, judicial candidates may participate in debates, but the canons of judicial ethics proscribe discussion of certain matters.

In deciding whether Principle One, which requires candidates to engage in “fair public debate”, has been violated by judicial candidates, FCP will consider the public’s right to know, whether existing campaign materials and appearances have given the public sufficient information with which to make informed decisions in the election, and whether the proposed debate or forum is designed to ensure adherence to the canons of judicial ethics.

We believe that three requirements are necessary to ensure such adherence. First, the debate must be chaired by an impartial mediator. Second, the mediator must have sufficient knowledge of the Code of Judicial Conduct and interpretive materials to make decisions about permissible topics of discussion. Determination of permissible topics prior to the debate would be one way of resolving potential disputes. Third, the moderator must have a way of reviewing questions for appropriateness. This could be achieved either by entrusting the moderator with development of questions or by requiring members of the audience to submit written questions to the moderator.

FCP encourages candidates, including judicial candidates to communicate with each other or their representatives to find mutually acceptable conditions, acknowledging the constraints in this case on judicial candidates.

The judicial candidate complaining about failure to debate must show that all three criteria have been met.

In this case, Mr. Mausert failed to meet the first and third criteria. Two partisan operatives acting as mediator do not constitute an impartial mediator. Mr. Mausert proposed that the candidates be allowed to ask each other questions directly, thus depriving the mediator of the ability to screen questions for appropriateness.

Judicial candidates are further advised that once these criteria are met, the candidate complained against must demonstrate that he or she has engaged in debate sufficient to inform reasonably aware voters of the issues.

When there is uncertainty about the appropriateness of a proposed debate, candidates are advised that the prudent course for judicial candidates is to seek guidance from the Judicial Campaign Ethics Center.

Mr. Mausert further complained that Judge Hall may have violated FCP Principle One by improperly pressuring attorneys to assist in his campaign, in violation of Canon 5 of the Code of Judicial Conduct.

NO FINDING

FCP does not issue opinions about legal matters, which are best left to the courts or appropriate administrative bodies for adjudication.

-end-

Candidates are reminded that misrepresentation of FCP findings in order to obtain political advantage constitutes an unfair campaign practice.