

IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,153

BARBARA J. NATHANSON,

Appellant,

vs.

MARIA K. KORVICK,
Circuit Court Judge of the
Eleventh Judicial Circuit
in and for Dade County,
Florida,

Appellee.

BRIEF OF APPELLEE

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By

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STATEMENT OF THE CASE AND FACTS

Appellee accepts the Statement of the Case and Facts stated in Appellant's Brief.

SUMMARY OF ARGUMENT

The District Court of Appeal indicated in its certification that the question presented will be controlled by the determination in McKenzie v. Breakstone. The determination of Breakstone by this Honorable Court requires that the order of the trial judge denying a motion for disqualification be sustained.

Appellant was a petitioner for writ of prohibition in the District Court. As such, she had the burden of alleging and showing facts in the record sufficient to show that a writ of prohibition should be granted. The record presented shows only that the attorney for appellant's adversary in the trial court made a contribution of \$110 to the trial judge's re-election campaign, and that said attorney's name appears on a letterhead, along with 98 other persons, endorsing the judge's re-election, inviting financial contributions and requesting a signature on an endorsement card. The record shows further that said letter indicates that the persons whose names appear thereon constitute a campaign committee.

The record in this case does not show that the activities of counsel opposing appellant in the trial court were anything other than normal incidents in a campaign for public office and did not indicate any specific and substantial political

relationship sufficient to compel disqualification of the trial judge.

ARGUMENT

IT WAS NOT ERROR FOR THE TRIAL COURT TO DENY APPELLANT'S MOTION FOR DISQUALIFICATION BECAUSE OF THE ACTIVITY OF OPPOSING COUNSEL IN SUPPORT OF THE TRIAL JUDGE'S RE-ELECTION WHICH WAS SHOWN BY THE MOTION

In its certification to this Honorable Court, the District Court stated that in its view the question at issue would be controlled by the decision of this Court.

McKenzie v. Breakstone, ___ So.2d ___ 15, F.L.W. S397, opinion filed July 19, 1990. We agree. Breakstone, we contend, requires denial of the writ of prohibition in this case.

Appellant was the petitioner for writ of prohibition in the District Court. As such, she had the burden of alleging, and presenting a record to show, that the writ should be granted. State ex rel. Florida Industrial Commission v. Willis, 124 So.2d 48, 51 (Fla. 1st DCA 1960); 35 Fla.Jur.2d Mandamus and Prohibition §176.

The record presented here shows that appellant's opposing attorney in the trial court contributed a check for \$110 to the trial judge's re-election campaign and that the attorney's name appears on a letterhead with 98 other persons (all of who appear to be attorneys) stating that these persons are a committee for the judge's re-election and asking the recipient of the letter to sign an endorsement card and make a contribution. What is significantly absent from the record is

any indication of what other function, if any, was performed by this committee apart from sending the letter addressed, "Dear Colleague". In a report sponsored, inter alia, by the American Bar Association and the American Judicature Society, as quoted in Raybon v. Burnette, 135 So.2d 228, 230 (Fla. 2d DCA 1961), the following appears:

In order to make the existing state election systems work (whether the state elects or appoints its judiciary) the informed opinion of the members of the bar as to the qualification of judicial candidates should be brought to the attention of the voters. This should be more than a mere poll of the relative popularity of the various candidates among the members of the bar. The bar should not be content with the mere announcement of its recommendations. It should campaign actively in support of its position for or against judicial candidates. . . .

The activity of counsel shown by this record in support of the trial judge's election was a normal incident in support of the judge's election. In the Breakstone decision, this Court was careful to distinguish between activity which was a normal incident of a political campaign and other activity indicating a specific and substantial political relationship closer than that which ordinarily exists between the local bar and bench. McKenzie v. Breakstone, supra, 15 F.L.W. at S400 n.5 and S399, text at n.5. In the instant case, the activity of counsel shown in the record did not demonstrate a political relationship sufficient to compel disqualification. Canon 7B(2) of the Code of Judicial Conduct requires a judicial candidate to form a committee to solicit funds and support.

CONCLUSION

Appellee urges that this Court determine the question presented so as to indicate that the activities of Appellant's opposing counsel in support of the trial judge did not compel the disqualification of the trial judge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was this 27th day of July, 1990, mailed to: Marsha B. Elser, Esq., 1575 Courthouse Tower, 44 West Flagler Street, Miami, Florida 33130; Michael J. Neimand, Esq., Assistant Attorney General, 401 N.W. 2nd Avenue, Suite B921, Miami, Florida 33128; and to Edward C. Vining, Jr., Esq., Suite 527, Ingraham Building, 25 S.E. Second Avenue, Miami, Florida 33131.



Assistant County Attorney