

ARKANSAS JUSICIAL DISCIPLINE AND DISABILITY COMMISSION

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IN RE THE HONORABLE WENDELL L. GRIFFEN

JUDICIAL DISCIPLINE
AND
DISABILITY COMMISSION

NOS.05-328, 05-356

**REPORT TO THE ARKANSAS JUDICIAL DISCIPLINE AND DISABILITY
COMMISSION RECOMMENDING DISMISSAL OF THESE CASES**

Respondent filed a motion for summary judgment July 10, 2007. These matters presently are scheduled for a formal disciplinary hearing to commence August 23, 2007 before the undersigned panel, which was appointed to hear these matters pursuant to Commission Rule 11. However, this panel has reviewed Respondent's motion for summary judgment, his answers to discovery and the applicable law and has concluded that there are no issues of material fact to be resolved and that Respondent is entitled to judgment in his favor as a matter of law.

In his answers to discovery, Respondent has admitted making the statements in question under the circumstances described in the press reports concerning those statements. *See*, Respondent's Response to Requests for Admission (filed May 24, 2007); Respondent's Answers and Objections to Complainant's Interrogatories and Requests for Production of Documents, Nos. 6-11, 19, 21 (filed May 24, 2007). Therefore, there does not appear to be any issue of material fact left for resolution in these cases. We turn now to the application of relevant law to these uncontroverted facts.

If Respondent's admitted public remarks constitute "protected speech" under relevant precedent (which is a question of law), that is the end of our inquiry. Conversely, if Respondent's remarks are not "protected speech," then our inquiry must logically proceed to a hearing to determine whether Respondent's remarks violated the

Arkansas Code of Judicial Conduct. The panel has reviewed the Eighth Circuit's *en banc* decision in *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005) and that decision's recent interpretation by the Fifth Circuit Court of Appeals in *Genevein v. Willing*, ___ F.3d ___ (No. 06-50368) (5th Cir., July 20, 2007), and has concluded that the speech in issue does constitute "protected speech" under the First Amendment to the United States Constitution. This panel believes that the holdings in *White* and *Genevein*, when applied to the uncontested facts of the pending cases, compel the inescapable conclusion that the speech in issue is protected from sanction by the First Amendment as it has been interpreted by the federal courts. Therefore, we see no need to hold a formal disciplinary hearing in these matters and we recommend to the full Commission that Respondent's motion for summary judgment be granted and that these cases be dismissed.

Respectfully submitted,


Chris Williams


John Everett


Bill Fly

Dated this 8 day of August, 2007