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Deployment won't pause candidate's defamation suit

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Neither candidate landed on Cook County voters' November ballots, but a dispute between two former state's attorney hopefuls are continuing their fight in court.

Last month, Cook County Circuit Judge Kathy M. Flanagan ruled discovery should begin in the case brought by former 2nd Ward Ald. Robert W. Fioretti against William E. Conway III and his political action committee, Friends of Bill Conway, alleging defamation and civil conspiracy.

Her ruling held that Conway, who's represented by counsel, cannot have the case delayed while he's overseas on military duty.

Fioretti's complaint, filed in February during the heat of the primary contest, focuses on a Conway campaign mailer accusing Fioretti of corruption.

Fioretti maintained the suit even after both he and Conway finished behind incumbent State's Attorney Kimberly M. Foxx in the March election. Foxx is the projected winner of the Nov. 3 general election based on unofficial results.

After Flanagan denied Conway's motion to dismiss the complaint on free-speech grounds, Conway, a lieutenant in the U.S. Naval Reserves, sought to pause the case because he was ordered deployed in September. Conway left Germany on Oct. 5 and will be out of the country until Sept. 2021.

His lawyer, Ryan B. Jacobson

of SmithAmundsen LLC, sought to have the case stayed until Conway's return under the Servicemembers Civil Relief Act.

Conway argued he is a material witness in his own defense who needs to regularly consult with counsel, and that his naval intelligence work puts "limitations on his communications with friends and family stateside during his deployment."

The SCRA, a federal law, allows for the suspension of judicial and administrative proceedings where the servicemember is a defendant.

But Flanagan ruled Conway's deployment should not stop the case from proceeding to discovery because the proceedings at this stage do not require him to physically appear before the court, except for a deposition.

She wrote that Jacobson could "handle the discovery process and defense of the action on his behalf" and that if Conway's consultation was needed "it does not appear that he would be incommunicado, as he attests that he will be doing work in Germany, and not located in a part of the world where communication would be implausible or impractical."

Jacobson said in a written statement that "we plan to respectfully seek her reconsideration."

In the suit, Fioretti alleges a full-color flyer sent out by the Conway campaign through the political consulting firm Adelstein & Associates LLC and production company A/L Media LLC contained false



Robert W. Fioretti



William E. Conway III

and defamatory statements meant to damage his reputation and campaign.

The mailers described Fioretti as "a corrupt politician" who "worked against us" and implied Fioretti "accepted 'massive campaign contributions'" in return for a vote to approve the city's parking meter deal in 2008.

The complaint alleges the mailer was sent to hundreds of thousands of Cook County voters between Feb. 18 and 20, giving him "a minimal amount of time to rebut the allegation."

Fioretti contends the campaign piece effectively accused him of committing a felony. He disputes the allegation and alleges Conway and his committee printed it "in bad faith with both an intent to harm plaintiff and knowledge of the false nature of the statements or in reckless disregard concerning the veracity of the statements."

Fioretti argues public campaign contribution records don't back up the claims and that Conway and his committee have never shown any

proof that Fioretti accepted contributions in return for his vote on the parking meter deal.

The complaint alleges the campaign accusations were made with "actual malice" and placed him in a false light.

Anthony J. Peraica, Fioretti's attorney, said, "I believe he has a very strong case because they knew the information in the mailer was false and they sent it out anyway."

Jacobson criticized Fioretti's effort.

"It's a shame, really, that almost 8 months after he lost the primary with just 5% of the vote Fioretti would waste Cook County resources pursuing a libel suit against a former political opponent," he said. "This is the same candidate who belittled Conway's military record during the campaign, and who now demands the case push ahead in Conway's absence, knowing he was just deployed overseas to serve our country."

The case is *Robert W. Fioretti v. William E. Conway III, et al.*, 20 L 2407.