



THE SUPREME COURT of OHIO

BOARD of COMMISSIONERS ON GRIEVANCES & DISCIPLINE

JUDICIAL CANDIDATE SEMINAR 2014

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AGENDA

- **BCGD:** Code of Judicial Conduct
 - Campaign speech and conduct
 - Campaign contributions
- **Secretary of State:** campaign finance law, reports, and disclaimers
- Question and answer session

OVERVIEW OF MATERIALS

- Rules
- Contribution limit chart
- Advisory opinion summaries
- Breakdown of judicial campaign sanctions
- Case summaries
- Contact and website information



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JUDICIAL CAMPAIGN MISCONDUCT



OVERARCHING PRINCIPLES



❖ **Canon 4:** A judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the *independence, integrity, or impartiality* of the judiciary.

OVERARCHING PRINCIPLES



❖ **Rule 4.2(a)(1):** A judicial candidate shall be responsible for...acting at all times in a manner consistent with the *independence, integrity, and impartiality* of the judiciary.

OVERARCHING PRINCIPLES

❖ **Rule 4.3, Comment [1]:** A judicial candidate must be scrupulously fair and accurate in all statements made by the candidate and his or her campaign committee.

Losing Sight of the Overarching Principles



- “She will be a tough judge that supports the death penalty and isn’t afraid to use it...she favors the death penalty for convicted murderers.”
- “My opponent is a liberal who is soft on criminals.”
- “Endorsed by the Neighborhood Protection Council.” (a fictitious entity)
- “You need to step up to the plate and contribute to my campaign.”

Losing Sight of the Overarching Principles



- “As a lower court judge, his error allowed Larry Flynt to go free and continue selling pornography in Hamilton County.”
- “My opponent got appointed by the political bosses in Columbus.”
- “I earned six college degrees in seven years.”
- To a defendant: “Tell all your family how you feel about me because I’m running this year for the common pleas court.”

Candidates Portraying Themselves Inaccurately



- Past photographs of candidate in judicial robe without explanatory language (*Lilly I, Lilly II, Moll*)
- Failing to distinguish current judicial seat from the one being sought (*Michael I*)
- Using the title “Judge” in campaign materials while not currently a judge (*O’Toole*)
- During campaign, former judge wearing name badge stating she holds her prior judicial seat (*O’Toole*)

BREAKDOWN OF SANCTIONS

Suspension (partially stayed): <i>D. O’Neill</i> ** (\$4,600)	Stayed Suspension and Other Sanctions: Hildebrandt* (\$23,000) Beery (\$16,400)	Stayed Suspension: <i>Evans</i> ** (\$1,000) <i>Kaup</i> * (\$1,000)
Public Reprimand, Fine, and Attorney Fees: Burick* (\$13,900) Hein* (\$7,600) Kienzle* (\$6,700) Davis* (\$15,700) O’Toole* (\$6,000) [PENDING]	Public Reprimand and Fine: Lilly II** (\$3,300) Michael II* (\$6,300)	Public Reprimand and Attorney Fees: PurDue II (\$3,700)
Public Reprimand: Harper (\$1,300) Morris* (\$100) Spicer (\$1,800)	Fine and Attorney Fees: Brigner** (\$2,200) Michael I* (\$6,100) Moll* (\$7,100)	Fine Only: Carr (\$2,600) Emrich (\$1,450) Roberts (\$200) PerDue I (\$300) O’Reilly (\$6,600) Lilly I (\$1,600)
Other: Keyes/Tailer (cease and desist order)	Notes: - Figures in parentheses = total of all fines, costs, and attorney fees - Cases in italics were decided by the Supreme Court	Notes: * Indicates more severe sanction than initially recommended ** Indicates less severe sanction than initially recommended



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JUDICIAL CAMPAIGN BASICS



CODE OF JUDICIAL CONDUCT

- ❖ Rule 4.1 – Political and campaign activities (judges and candidates)
- ❖ Rule 4.2 - Political and campaign activities (candidates)
- ❖ Rule 4.3 – Campaign standards and communications
- ❖ Rule 4.4 – Campaign solicitations and contributions
- ❖ Rule 4.5 – Judges who become candidates for nonjudicial office
- ❖ Rule 4.6 - Definitions

WHAT'S DIFFERENT ABOUT A JUDICIAL CAMPAIGN?

- Campaign prohibitions and limits
 - Pledges, promises, and commitments
 - Endorsements of other candidates
 - Appearance in joint campaign advertisements w/ nonjudicial candidates
 - Fundraising with nonjudicial candidates
 - Leadership positions in political parties

WHAT'S DIFFERENT ABOUT A JUDICIAL CAMPAIGN?

- Fundraising prohibitions and limits
 - Personal solicitations: w/ 3 exceptions
 - Limited time period
 - Non-campaign uses
 - “No carry-in” rule
- KEY = the judicial candidate is responsible for the campaign – Rule 4.2



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POLITICAL AND CAMPAIGN ACTIVITIES



* Rule 4.1 and comments [8]-[13]

* Rule 4.2

- **NO** pledges, promises, statements that commit or appear to commit
- **NO** comments on pending cases before ANY judge
- **NO** statements affecting outcomes or impairing fairness
- **OK** to state personal beliefs on issues – add statement re: duty to apply the law fairly and impartially
- **OK** to make statements on court administration

CAMPAIGNING WITH OTHER CANDIDATES

DO'S

- Raising funds w/ other judicial candidates
- Advertising w/ other judicial candidates
- Party-sponsored fundraising activities
- Slate cards, ballots, etc. that identify ALL party candidates

DO NOT'S

- Public endorsement or opposition
- Fundraising w/ nonjudicial candidates (except party-sponsored activities)
- Advertising w/ nonjudicial candidates

“ON THE CAMPAIGN TRAIL”

YES

- Attending political gatherings and fundraisers of other candidates
- In general, speaking at political gatherings

NO

- Speaking on behalf of political party or another candidate for public office
- Introducing candidates at political events (see Adv. Op. 92-11) – public endorsement

PARTY AFFILIATION AND ENDORSEMENTS

- **OK** to advertise and speak about party nomination, endorsement, membership, or affiliation – at any time during the campaign
- **OK** to seek and advertise endorsements
- Statements cannot be false, misleading, or deceiving
 - Endorsement must be current
 - Endorsing entity must be clearly identified
 - Avoid short-hand terms to describe endorsement
 - No “made up” endorsing entities



THE SUPREME COURT of OHIO

Board of Commissioners on Grievances & Discipline

CAMPAIGN STANDARDS AND COMMUNICATIONS



1/1/2013 CODE AMENDMENTS

- **New Rule 4.3(C):** may not use title of public office or position “immediately preceding or following” name when the candidate does not hold the office or position
- **New Rule 4.3(E):** may not use “former” or “retired” immediately preceding “judge” unless in prominent lettering and appears each time “judge” is used

Definitions

Rule 4.6(N)

*effective
1/1/2013

- **What is “prominent lettering?”**
 - Not less than the size of the largest type used to display the title of office or the court to which the judicial candidate seeks election

1/1/2013 CODE AMENDMENTS

- **New Rule 4.3, Comment [3]:** use of title of public office or position
 - Reserved for those who contemporaneously hold the office by election or appointment
 - Use of title by one not entitled to the office falsely states incumbency and is inherently misleading and deceptive
 - Misuse of a title violates the “3 I’s”

RULE 4.3

Prohibited:

- Posting, publishing, broadcasting, transmitting, circulating, or distributing...
 - Information about self or opponent
 - Knowing information is false OR
 - Reckless disregard of whether or not false or, if true, deceiving or misleading to a *reasonable person*

RULE 4.3

Prohibited:

- Use of title of an office preceding the candidate's name when the office is not currently held
- Use of "judge" if not a judge UNLESS "magic language" (*elect or vote or for*)
- Use of "re-elect" if never elected to office being sought or not the current occupant of the office for which a candidate

RULE 4.3

Additional prohibitions:

- Misrepresentation of identity, qualifications, position
- False statements re: education, training, awards, licensure, employment
- False statements re: criminal background, mental illness, military discipline
- False endorsements
- Bias or prejudice toward opponent based on race, sex, religion, etc.

Key Campaign Authorities
CASES

- *Burick* – false and misleading statements about opponent’s appointment and the sentence opponent imposed in a specific case
- *Kaup* – “endorsement” by nonexistent entity
- *Beery* – false and misleading statements about opponent’s appointment and handling of a criminal case while a prosecutor

Key Campaign Authorities
ADVISORY OPINIONS

- **2002-08**
 - Issued after *Republican Party of Minnesota v. White*
 - Guidelines on scope of permissible judicial campaign speech (many now codified in Canon 4)
- **2010-7 and ABA Formal Op. 462**
 - Judicial use of and participation in social networking sites
 - Advice applicable to campaigns

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**CAMPAIGN SOLICITATIONS
 AND CONTRIBUTIONS**



Definitions
Rule 4.6(F)

- **When am I a “judicial candidate?” (and thus subject to Canon 4)**
 - **Public** announcement of candidacy
- OR**
- Declared or filed with election authority
- OR**
- Authorized the solicitation or receipt of contributions or support for judicial office

WHICHEVER OCCURRED FIRST

Definitions
Rule 4.6(J)

- **What is an “organization?”**
 - Any entity
 - Any combination of two or more persons
 - PACs
 - Law firms
 - Organizations affiliated w/ political parties
 - Labor organizations
 - Other campaign and caucus campaign committees
- **NOT “organizations” - political parties**

Definitions
Rule 4.6(C)

- **Who is my “immediate family?”**
 - Spouse / domestic partner
 - **Related by blood or marriage:**
 - » Parent
 - » Child
 - » Brother or sister
 - » Grandparent
 - » Grandchild
 - » Uncle or aunt
 - » Nephew or niece
 - » Great-grandparent
 - » First cousin

Definitions
Rule 4.6(D)
and
Terminology
Section

- **What is a “domestic partner?”**
 - **Person with whom another person maintains a household AND an intimate relationship**
 - **Other than a person to whom one is legally married**
 - **See *Michael I***

Rule 4.4(A) – Solicitation of Contributions

- **Ban on most personal solicitation except:**
 - General request when speaking to an audience of 20 or more individuals
 - Letters from campaign that direct contributions to the committee not candidate
 - **NEW 4.4(A)(3):** may make general request in text format (not voice) via an electronic communication (eff. 1/1/2013)
 - **NEW:** Immediate family members: See *AFSCME v. Brunner*, 912 F.Supp. 556 (12/10/2012)

Rule 4.4(A) – Solicitation of Contributions

- **Absolute ban on personal receipt of campaign contributions**
- **“Tiered” fundraising events no longer prohibited (eff. 1/1/2013)**
- **No exception for close friends of judicial candidates (see *AFSCME v. Brunner*)**

Fundraising Period – Rule 4.4

- Fundraising may begin 120 days before the primary
- Fundraising ends 120 days after the general election except:
 - If defeated in primary – fundraising may continue until 120 days after the primary
- “Seeding” period (personal funds) – 90 days prior to 120-day fundraising period

CONTRIBUTION LIMITS

CANDIDATE FOR:	INDIVIDUAL		ORGANIZATION		POLITICAL PARTY	
	Primary*	General	Primary*	General	Primary*	General
Supreme Court Chief Justice and Justice	\$3,600	\$3,600	\$6,700	\$6,700	\$181,600	\$333,000
Court of Appeals	\$1,200	\$1,200	\$3,600	\$3,600	\$36,300	\$72,700
Common Pleas, Municipal, and County Court more than 750,000	\$600	\$600	\$3,600	\$3,600	\$36,300	\$72,700
750,000 or less	\$600	\$600	\$3,600	\$3,600	\$30,300	\$60,500

CONTRIBUTION LIMITS

- * Contested primary: primary limits apply
- * No contested primary: general election limits apply throughout fundraising period
- No limits: contributions from the candidate and the candidate’s immediate family
- Contributions from the same source are aggregated – however: lawyers and their law firms are separate contributing entities

CONTRIBUTION RESTRICTIONS – RULE 4.4(C)

OK	NOT OK
<ul style="list-style-type: none"> • Family members of court employees • Lawyers who are not court employees or contractors • Court appointees (but must be identified as such in campaign reporting) • Unincorporated labor organizations, union PACs, union PCEs (but verify with the Secretary of State's Office) 	<ul style="list-style-type: none"> • Court employees (current court and prospective court) • Contractors and others doing business w/ the court (over \$250 last 6 yrs) • For-profit and non-profit corporations (R.C. 3599.03) • Incorporated labor organizations (R.C. 3599.03) – <u>seek guidance</u>

CAMPAIGN ACTIVITY BY PUBLIC EMPLOYEES

<ul style="list-style-type: none"> • Rule 4.4(B) – a judicial candidate MUST prohibit public employees subject to his or her direction or control from soliciting or receiving contributions <ul style="list-style-type: none"> ○ Court employees cannot serve as treasurer or member of committee ○ Court employees cannot sell tickets or collect money at a fundraiser

CAMPAIGN ACTIVITY BY PUBLIC EMPLOYEES

<ul style="list-style-type: none"> • “Direct report” employees of public officials / employees cannot be involved in solicitation or receipt of funds <ul style="list-style-type: none"> ○ For judges: same court or division • Restrictions only apply to public employees and officials • Campaign volunteering OK if not compelled and on private time • Thank you notes – OK but should have campaign committee send
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MAGISTRATES

- Magistrates are subject to the Code of Judicial Conduct
- Advisory Opinions on magistrate campaign activity
 - 02-13: Campaign activities by magistrates on behalf of judicial candidates
 - 03-8: Appearance in robe when running for office
- *In Re Moll*, 2012-Ohio-5674 (magistrate as candidate)

USE OF CAMPAIGN FUNDS

- Rule 4.1(A)(4), (B)(2) and (3)
- Rule 4.2(B)(3)
 - THESE RULES ARE NOT APPLICABLE TO PERSONAL FUNDS
 - ✦ Personal contribution to another candidate is NOT an endorsement
 - NO NON-JUDICIAL CAMPAIGN CARRI-INS

USE OF CAMPAIGN FUNDS

- NO POLITICAL DONATIONS – EXCEPT:
 - ✦ Tickets to other candidates’ fundraisers
 - ✦ Contributions to political party for administrative and operational expenses
 - ✦ Tickets to party events – purpose of the event must be to raise funds for administrative and operational expenses



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CAMPAIGN GRIEVANCE PROCESS



Gov. Jud. R. II, Section 5

Campaign Grievance Procedure

- Grievance filed with Board
- Considered on expedited basis by Secretary
- If facially valid, reviewed by probable cause panel
- Confidential until probable cause is found
- Board hearing if passes probable cause
- Grievant's burden is clear and convincing evidence
- If hearing panel finds violation, considered and decided by 5-judge commission

Gov. Jud. R. II, Section 5

Campaign Grievance Potential Penalties

- Disciplinary sanction
- Interim cease and desist order
- Cease and desist order
- Fine
- Assessment of costs
- Assessment of attorneys fees

Other options for filing grievance:
ODC, Elections Commission

CAMPAIGN GRIEVANCE LESSONS

- If in doubt, ask for guidance because the candidate is responsible for all campaign activity
- Be wary of local party and outside consultants with little judicial campaign experience
- Do not use grievance system for political advantage
- Be able to document campaign statements
- Avoid “absolutes”

CALL WITH QUESTIONS

BCGD Office –
614.387.9370



Conservative / nonbinding advice

Avoid needless disciplinary violations and financial sanctions



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