

#### **OVERVIEW OF MATERIALS**

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

Ohio Board of Professional Conduct JUDICIAL CAMPAIGN MISCONDUCT 4

# **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.



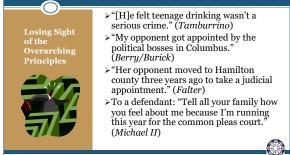
of the Overarching Principles

- > "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." (*Burick*)
- > "My opponent is a liberal who is soft on criminals." (*Hein*)
- >"Endorsed by the Neighborhood Protection Council." (a fictitious entity) (*Kaup*)
- > "You need to step up to the plate and contribute to my campaign." (*D. O'Neill*)

8

7

9



Ohio Board of Professional Conduct JUDICIAL CAMPAIGN BASICS

10

#### 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 (resign-to-run rule) 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 with nonjudicial candidates
- > Fundraising with nonjudicial candidates
- > Leadership positions in political parties

#### WHAT'S DIFFERENT ABOUT A JUDICIAL CAMPAIGN?

>Fundraising prohibitions and limits:

- Personal solicitations; with four exceptions
- Limited time period to fundraise
- $_{\circ}\,$  No transfer of funds to other candidates
- ° "No carry-in" rule
- >KEY = the judicial candidate is responsible for the campaign Rule 4.2(A)(2)

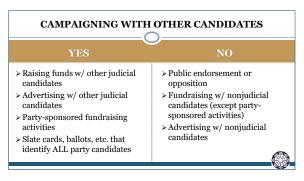


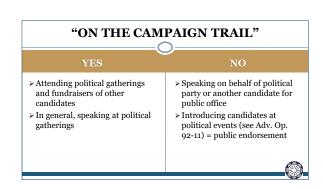
13

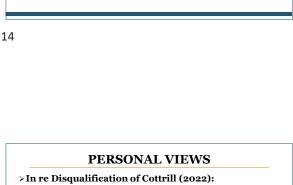
<u>NO</u> pledges, promises, statements that commit or appear to commit
 <u>NO</u> comments on cases pending or impending before any court in the United States or its territories
 <u>NO</u> statements affecting outcomes or impairing fairness
 <u>OK</u> to state personal beliefs on issues – add statement re: duty to apply the law fairly and impartially
 <u>OK</u> to make statements on court administration

15

[8]-[13]



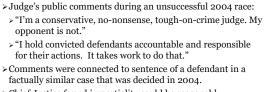




Ohio Board of Professional Conduct

POLITICAL AND

CAMPAIGN ACTIVITIES



> Chief Justice found impartiality could be reasonably questioned.

#### PARTY AFFILIATION AND ENDORSEMENTS

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

19

Ohio Board of Professional Conduct
CAMPAIGN STANDARDS
AND COMMUNICATIONS

20

#### **RULE 4.3(A)**

#### Prohibited from:

- Posting, publishing, broadcasting, transmitting, circulating, or distributing:
- Information about self or opponent
- $_\circ$  Either knowing the information to be <u>false</u>  $\mathbf{OR}$
- ° With reckless disregard of whether or not it is false



21

## RULE 4.3(A)

#### In re O'Toole (2014)

- >Respondent claimed to be a judge when she was not, a misrepresentation that was patently false.
- > Respondent's conduct undermined public confidence in the judiciary as a whole and injured both the public and the judiciary.
- ><u>Result</u>: Severance of "deceiving or misleading" language from rule.
- >Rule now applies only to **false communications** that are made knowingly or with reckless disregard.

22

#### **RULE 4.3(A)**

ODC v. Tamburrino (2016)

Respondent's judicial campaign commercial contained patently false statements about the respondent's opponent and respondent acted knowingly or with reckless disregard about the false statements.

- >Impugned incumbent opponent
- ≻Endangered the independence of the judiciary
- Sanction: One-year suspension with six months stayed

#### RULE 4.3(A)

#### In re Falter (2021)

- >Candidate acted with reckless disregard by falsely stating that her opponent moved to Hamilton County to accept a judicial appointment from the Governor. Respondentcandidate relied on courthouse gossip and did not verify the accuracy of her statements.
- > Sanction: public reprimand and fine.
- "Reckless disregard" = result is possible and candidate chooses to ignore the risk.

## **RULE 4.3**

- >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
- Rule 4.3(E): may not use terms "former" or "retired" immediately preceding "judge" unless in prominent lettering and appears each time "judge" is used

**RULE 4.3** 

> Use of title of an office preceding the candidate's

name when the office is not currently held. Rule

> 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(F).

> Use of term "judge" if not a judge **UNLESS** "magic language" (*elect, vote,* or *for*). Rule 4.3(D).

 $\bigcirc$ 

26

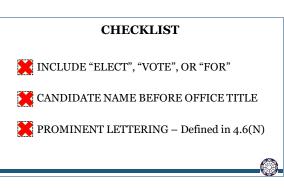
Definitions

25

27

**Prohibited:** 

4.3(C).



What is "prominent lettering?"

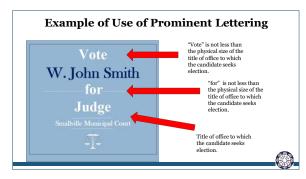
largest type.

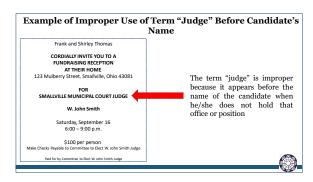
> Certain terms (elect, vote, for, retired, or

former) cannot be less than the physical

size of the largest type used to display the title of office or the court to which the judicial candidate seeks election,

irrespective of the point size or font of the







#### **RULE 4.3**

Rule 4.3, Cmt. [2]: 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 that falsely states incumbency
- > Misuse of a title violates the "3 I's"

32

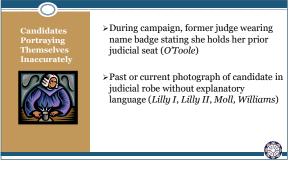
#### **RULE 4.3**

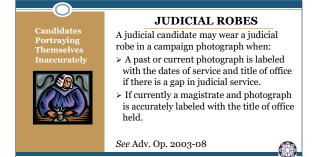
#### Additional prohibitions:

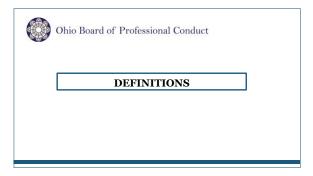
- > Misrepresentation of identity, qualifications, position.
- False statements re: education, training, awards, licensure, employment
- > False statements re: criminal background, mental illness, military discipline
- > False endorsements
- > Bias or prejudice toward opponent based on race, sex, religion,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



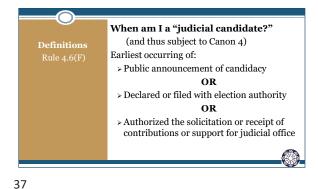




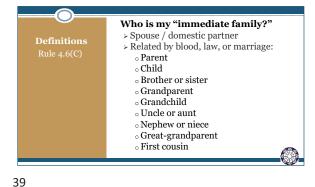




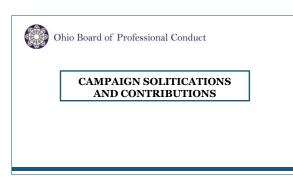














Ban on most personal solicitations except:

- > *General request* when speaking to an audience of 20 or more individuals
- > Letters from campaign that direct contributions to the committee not candidate
- > General request in text format via an electronic communication (no voice or video)
- > Immediate family members (but not close friends): 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

- > "Can I be deputy treasurer?" Yes, but only for purposes of writing/signing checks to pay bills. Cannot collect or deposit contributions.
- "May my spouse be treasurer?" Yes, but should not use home address for contributions.



### **FUNDRAISING PERIOD – RULE 4.4**

- >Fundraising may begin 180 days before the date of the May primary, regardless of actual primary date—for 2024 candidates—September 14, 2023
- >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 180day fundraising period—for 2024 candidates—June 16, 2023

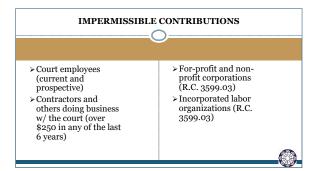
44

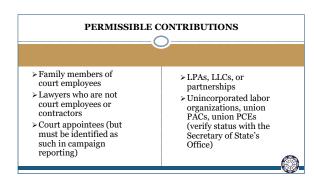
CANDIDATE FOR:	INDIVIDUAL					
	Primary*	General	Primary*	General	Primary*	General
Supreme Court Chief Justice and Justice	\$4,100	\$4,100	\$7,500	\$7,500	\$203,900	\$373,900
Court of Appeals	\$1,400	\$1,400	\$4,100	\$4,100	\$40,800	\$81,700
Common Pleas, Municipal, and County Court more than 750,000	\$650	\$650	\$4,100	\$4,100	\$40,800	\$81,700
750,000 or less	\$650	\$650	\$4,100	\$4,100	\$34,000	\$67,900

45



- >**Contested primary**: primary limits apply; reset after primary
- >**No contested primary**: general election limits apply throughout fundraising period
- >**Unlimited 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





#### Ohio Elections Comm. Adv. Op. 96-03

- "Corporation" in R.C. 3599.03 is a for-profit corporation defined in R.C. 1701.02, or a non-profit corporation as defined in R.C. 1701.01;
- >"Corporation" does not include an LPA, LLC, partnership.

Ohio Board of Professional Conduct
CAMPAIGN EXPENDITURES

50

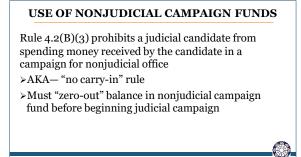
#### **EXPENDITURE OF CAMPAIGN FUNDS**

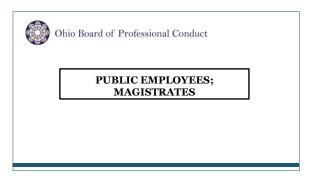
- ≻Rules 4.1(A)(4), (B)(2) and (3)
- <u>NO</u> political donations- EXCEPT:
  - ★ A ticket to another candidate's fundraiser or political party social event;
  - × A contributions to political party for administrative and operational expenses.

#### **EXPENDITURE OF CAMPAIGN FUNDS**

- >Code of Judicial Conduct does **not** govern expenditure of campaign funds (either timing or use), other than donations of campaign funds to political parties or other candidates.
- Revised Code defines what are permissible expenditure of campaign funds (legitimate, verifiable, ordinary, and necessary) and the manner of reporting of campaign expenditures and contributions. See R.C. 3517.08 and 3517.13.

52





51

#### CAMPAIGN ACTIVITY BY PUBLIC EMPLOYEES

Rule 4.4(B) - a judicial candidate must prohibit all public employees subject to his or her direction or control from soliciting or receiving contributions.

- > Employees cannot serve as treasurer or member of committee
- > Employees cannot sell tickets or collect money at a fundraiser

Private practice employees - no restrictions.

55

#### CAMPAIGN ACTIVITY BY **PUBLIC EMPLOYEES**

- >"Direct report" employees of public officials / employees cannot be involved in solicitation or receipt of funds
- For judges: same court or division
- >Restrictions apply only to public employees and officials
- >Campaign volunteering OK if not compelled and not on court time or using court resources

56

#### CAMPAIGN ACTIVITY BY **PUBLIC EMPLOYEES**

Disciplinary Counsel v. Horton, 2019-Ohio-4139

>Judge directed staff to perform campaign activities on court time (preparing prospective donor lists and campaign correspondence; attend political/campaign events; pick-up and deliver campaign checks, accept contributions)

>Judge blamed staff for not self-policing

57

#### CAMPAIGN ACTIVITY BY **PUBLIC EMPLOYEES**

Disciplinary Counsel v. Horton, 2019-Ohio-4139

>**Supreme Court**—activity was not *de minimis*; judge is responsible for "imposing clear rules prohibiting campaign work on county time or using county resources and strictly enforcing those rules;" "merely encouraging \* \* \* staff to attend a judicial-campaign seminar did not fulfill his obligation to ensure that his staff did not conduct campaign work on county time."

>Sanction-indefinite suspension

58

#### MAGISTRATES

- >Magistrates are subject to the Code of Judicial Conduct
- >Advisory Opinions on magistrate campaign activity
- 2018-04: Campaign activities by magistrates on behalf of judicial candidates
- 2003-8: Appearance in robe when running for office



# MAGISTRATES >*In re Moll*, 2012-Ohio-5674 (former magistrate as >In re Williams, 2023-Ohio-4116 (magistrate as a

candidate)

candidate)

