

JUDICIAL CANDIDATE SEMINAR 2024

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>BPC: Code of Judicial
Conduct

Campaign speech and
conduct

Campaign contributions
>Secretary of State:
Campaign finance law,
reports, and disclaimers
>Questions and answers

OVERVIEW OF MATERIALS

> Rules

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



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JUDICIAL CAMPAIGN MISCONDUCT

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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.



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.



- > "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)



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- > "[H]e felt teenage drinking wasn't a serious crime." (*Tamburrino*)
- > "My opponent got appointed by the political bosses in Columbus." (Berry/Burick)
- > "Her opponent moved to Hamilton county three years ago to take a judicial appointment." (Falter)
- > To a defendant: "Tell all your family how you feel about me because I'm running this year for the common pleas court." (Michael II)



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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 (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
- o Limited time period to fundraise
- No transfer of funds to other candidates
- o "No carry-in" rule
- >KEY = the judicial candidate is responsible for the campaign Rule 4.2(A)(2)



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POLITICAL AND
CAMPAIGN ACTIVITIES

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- ► NO pledges, promises, statements that commit or appear to commit
- > NO 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



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PERSONAL VIEWS

- > In re Disqualification of Cottrill (2022):
- >Judge's public comments during an unsuccessful 2004 race:
- \succ "I'm a conservative, no-nonsense, tough-on-crime judge. My opponent is not."
- > "I hold convicted defendants accountable and responsible for their actions. It takes work to do that."
- > Comments were connected to sentence of a defendant in a factually similar case that was decided in 2004.
- > Chief Justice found impartiality could be reasonably questioned.



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CAMPAIGNING WITH OTHER CANDIDATES

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NO

- ➤ Raising funds w/ other judicial candidates
- > Advertising w/ other judicial candidates
- > Party-sponsored fundraising activities
- > Slate cards, ballots, etc. that identify ALL party candidates
- ➤ Public endorsement or opposition
- > Fundraising w/ nonjudicial candidates (except partysponsored activities)
- > Advertising w/ nonjudicial candidates



"ON THE CAMPAIGN TRAIL"

YES

NIO

- > Attending political gatherings and fundraisers of other
- > In general, speaking at political gatherings
- Speaking on behalf of political party or another candidate for public office
- > Introducing candidates at political events (see Adv. Op. 92-11) = public endorsement

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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
- o Endorsement must be current
- o Endorsing entity must be clearly identified
- o Avoid short-hand terms to describe endorsement
- o No "made up" endorsing entities



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Prohibited from:

- > Posting, publishing, broadcasting, transmitting, circulating, or distributing:
- o Information about self or opponent
- o Either knowing the information to be false OR
- o With reckless disregard of whether or not it is false

RULE 4.3(A)



ote (2014)

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CAMPAIGN STANDARDS

AND COMMUNICATIONS

In re O'Toole (2014)

> Respondent claimed to be a judge when she was not, a misrepresentation that was patently false.

RULE 4.3(A)

- > 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.

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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



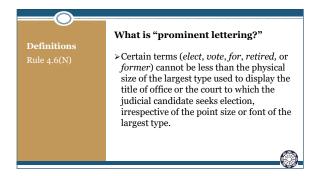
In re Falter (2021)

- > Candidate acted with reckless disregard by falsely stating that her opponent moved to Hamilton County to accept a judicial appointment from the Governor. Respondent-candidate 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



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RULE 4.3

Prohibited:

- Use of title of an office preceding the candidate's name when the office is not currently held. Rule 4.3(C).
- > Use of term "judge" if not a judge **UNLESS** "magic language" (*elect*, *vote*, or *for*). Rule 4.3(D).
- > 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).

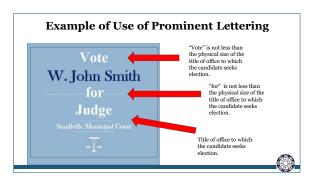
CHECKLIST

INCLUDE "ELECT", "VOTE", OR "FOR"

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- CANDIDATE NAME BEFORE OFFICE TITLE
- PROMINENT LETTERING Defined in 4.6(N)

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Example of Improper Use of Term "Judge" Before Candidate's Name

Frank and Shirley Thomas

CORDIALINITE YOU TO A
FUNDARISING RECEPTION
AT THEIR HOME

123 Mulberry Street. Smallville, Ohio 43081

FOR

SMALLVILLE MUNICIPAL COURT JUDGE

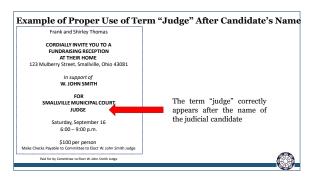
W. John Smith

Saturday, September 16
6:00 – 900 p.m.

\$100 per person

Make Checks Payable to Committee to Beet W. John Smith Judge
Paul by Committee to Beet W. John Smith Judge

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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"

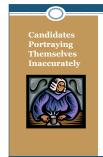


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RULE 4.3

Additional prohibitions:

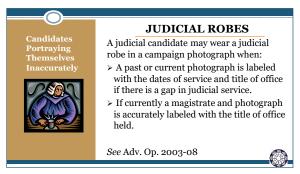
- $\succ \ \ \mbox{Misrepresentation of identity, qualifications, position.}$
- > False statements re: education, training, awards, licensure, employment
- False statements re: criminal background, mental illness, military discipline
- > False endorsements
- > Bias or prejudice toward opponent based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

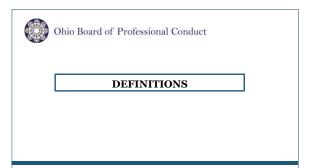


- > During campaign, former judge wearing name badge stating she holds her prior judicial seat (O'Toole)
- > Past or current photograph of candidate in judicial robe without explanatory language (Lilly I, Lilly II, Moll, Williams)



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When am I a "judicial candidate?"

(and thus subject to Canon 4)

Earliest occurring of:

> Public announcement of candidacy

OR

> Declared or filed with election authority

OR

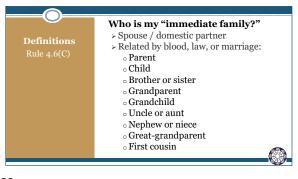
> Authorized the solicitation or receipt of contributions or support for judicial office

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

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Definitions
Rule 4.6(D) and
Terminology
Section

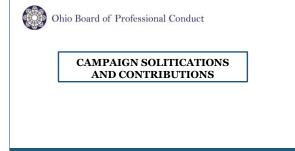
Who is a "domestic partner?"

> 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

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RULE 4.4(A) – SOLICITATION OF CONTRIBUTIONS

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)

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RULE 4.4(A) – SOLICITATION OF CONTRIBUTIONS

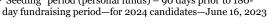
${\bf Absolute\,ban} \ {\rm on\ personal} \ {\it receipt} \ {\rm of\ campaign} \\ {\rm contributions}$

- "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 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:

 o If defeated in primary fundraising may continue until
- 120 days after the primary
 > "Seeding" period (personal funds) 90 days prior to 180-





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CONTRIBUTION LIMITS Primary* General Primary* General Primary* General \$1,400 \$1,400 \$4,100 \$4,100 \$40,800 \$81,700 \$650 \$40,800 \$81,700 \$4,100 750,000 or less \$650 \$650 \$4,100 \$4,100 \$34,000 \$67,900

CONTRIBUTION LIMITS

- >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

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> Court employees (current and prospective) > Contractors and others doing business w/ the court (over \$250 in any of the last 6 years) > Contractors and others doing business w/ the court (over \$250 in any of the last 6 years)

PERMISSIBLE CONTRIBUTIONS

- > Family members of court employees
- > Lawyers who are not court employees or contractors
- Court appointees (but must be identified as such in campaign reporting)
- > LPAs, LLCs, or partnerships
- > Unincorporated labor organizations, union PACs, union PCEs (verify status with the Secretary of State's Office)

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CAMPAIGN EXPENDITURES

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.



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EXPENDITURE OF CAMPAIGN FUNDS

- >Rules 4.1(A)(4), (B)(2) and (3)
- ∘ NO 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.



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USE OF NONJUDICIAL CAMPAIGN FUNDS

Rule 4.2(B)(3) prohibits a judicial candidate from spending money received by the candidate in a campaign for nonjudicial office

- >AKA- "no carry-in" rule
- >Must "zero-out" balance in nonjudicial campaign fund before beginning judicial campaign



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PUBLIC EMPLOYEES; MAGISTRATES

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.



CAMPAIGN ACTIVITY BY **PUBLIC EMPLOYEES**

- >"Direct report" employees of public officials / employees cannot be involved in solicitation or receipt of funds
- o 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



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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



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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



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MAGISTRATES

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

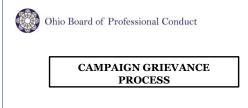


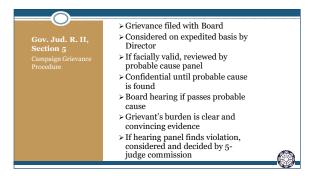
MAGISTRATES

- > In re Moll, 2012-Ohio-5674 (former magistrate as candidate)
- >In re Williams, 2023-Ohio-4116 (magistrate as a candidate)



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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 or no judicial campaign experience
- >Accuracy is essential
- >Be able to document campaign statements
- >Avoid "absolutes"





Conservative / nonbinding advice Avoid needless disciplinary violations and financial sanctions

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