

2016 Judicial Candidate Seminar



DECEMBER 3, 2015
EMBASSY SUITES DUBLIN
DUBLIN/COLUMBUS

JANUARY 27, 2016
HOLIDAY INN
FAIRBORN

FEBRUARY 17, 2016
MOYER JUDICIAL CENTER
COLUMBUS

FEBRUARY 18, 2016
HOLIDAY INN
STRONGSVILLE

JUNE 16, 2016
MOYER JUDICIAL CENTER
COLUMBUS

AUGUST 11, 2016
MOYER JUDICIAL CENTER
COLUMBUS



THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE

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NOTICE TO YEAR 2016 JUDICIAL CANDIDATES

Rule 4.2(A)(4) of the Code of Judicial Conduct requires all judicial candidates, including incumbent judges, who are seeking election in the year 2016 to attend a campaign practices seminar. To satisfy this requirement, a judicial candidate must attend an approved judicial candidate seminar not more than one year prior to or no later than sixty days after certification of candidacy by the county board of election or Secretary of State.

The Board of Professional Conduct of the Supreme Court of Ohio has scheduled judicial candidate seminars for judicial candidates who will be on the ballot in 2016. The dates, times, and locations of these seminars are as follows:

Thursday, December 3, 2015¹

3:45 – 5:45 p.m.
Embassy Suites Dublin
5100 Upper Metro Place
Dublin, Ohio 43017
(614) 790-9000

Wednesday, January 27, 2016

1:30 – 3:30 p.m.
Holiday Inn Fairborn
2800 Presidential Drive
Fairborn, Ohio 45324
(937) 426-7800

Wednesday, February 17, 2016

1:30 – 3:30 p.m.
Moyer Judicial Center
65 South Front Street, Room 101
Columbus, Ohio 43215
(614) 387-9445

Thursday, February 18, 2016

1:30 - 3:30 p.m.
Holiday Inn Strongsville
15471 Royalton Road
Strongsville, Ohio 44136
(440) 238-8800

Thursday, June 16, 2016²

1:30 - 3:30 p.m.
Moyer Judicial Center
65 S. Front Street, Room 281
Columbus, Ohio 43215
(614) 387-9445

Thursday, August 11, 2016³

1:30 - 3:30 p.m.
Moyer Judicial Center
65 S. Front Street, Room 281
Columbus, Ohio 43215
(614) 387-9445

Judicial candidates are encouraged to bring their campaign chairperson, volunteers, and treasurer to these seminars. The seminars are offered free of charge and preregistration is not required. Two hours of general continuing legal education credit will be provided.

If you have any questions regarding these seminars, please contact the Judicial College at (614) 387-9445.

¹ The December 3, 2015 seminar is in conjunction with the Ohio Common Pleas Judges Association meeting but, open to all 2016 candidates.

² Video Replay.

³ Video Replay.

CONTACT INFORMATION

Questions regarding Canon 4, Political and Campaign Activity by Judicial Candidates:

Richard A. Dove, Esq., Director
D. Allan Asbury, Esq., Senior Counsel
Board of Professional Conduct
The Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, OH 43215-3431
614-387-9370

Judicial Candidate Information on the Supreme Court of Ohio Website:
<http://www.supremecourt.ohio.gov/Judiciary/candidates/default.asp>

Questions regarding Campaign Finance Reporting and Disclaimers:

Katie Zvolanek
Campaign Finance Administrator
180 E. Broad St., 16th Floor
Columbus, OH 43215
614-728-6855
KZvolanek@ohiosecretaryofstate.gov

Other Contact Information:

Philip C. Richter
Ohio Elections Commission
21 West Broad Street, Suite 600
Columbus, OH 43215
614-466-3205
www.elc.ohio.gov

FACULTY BIOGRAPHIES

Richard A. Dove is the Director of the Board of Professional Conduct of the Supreme Court of Ohio, and serves as the Board's chief legal and administrative officer. Prior to his appointment as Secretary, Rick served for more than 22 years on the staff of the Supreme Court of Ohio, where his responsibilities included serving as the Court's liaison to the General Assembly and Executive Branch offices, providing counsel to the Court on a variety of legal and administrative matters, serving as director or interim director of four divisions of the Court, and serving four years as Assistant Administrative Director. He is an instructor for the Ohio Judicial College, Institute for Court Management, and other professional associations and authored "Judicial Campaign Conduct: Rules, Education, and Enforcement" published in the *Loyola (L.A.) Law Review*. He received the 2007 Award of Merit from the Columbus Bar Association and the 2014 Founders Award from the Ohio Center for Law-Related Education. Rick is a member of the Ohio State Bar Association's Chief Justice Thomas J. Moyer Legacy Committee and a distinguished life fellow of the Ohio State Bar Foundation. In 2015, Rick was elected to serve a one-year term as president of the National Council of Lawyer Disciplinary Boards. Rick is a graduate of Wittenberg University and Capital University Law School and is admitted to practice in Ohio, before the United States District Court for the Southern District of Ohio, and before the United States Supreme Court.

D. Allan Asbury is Senior Counsel to the Board of Professional Conduct. Before joining the Board, Allan served as administrative counsel for the Supreme Court and secretary to the Board on the Unauthorized Practice of Law. His primary duties for the Board include researching and drafting advisory opinions, providing ethics advice to Ohio lawyers, judges and judicial candidates, and assisting in the Board's ethics education efforts. Allan received his undergraduate and law degrees from Capital University. He is admitted to practice in Ohio, the United States District Court for the Southern District of Ohio, and before the United States Supreme Court.

Katie Zvolanek is Director of Campaign Finance and Administrative Counsel for the Ohio Secretary of State. Katie joined the Ohio Secretary of State's office in 2011, and oversees the policy and day-to-day operations of the Campaign Finance Division, manages the examination process for all campaign finance reports and is legal counsel for the division. In addition, she serves as counsel to the Business Services division of the office. Prior to her current position, Katie served as a Government Affairs Specialist for an Ohio-based public affairs and lobbying firm. She is a graduate of Colgate University and Capital University Law School.

Applicable Rules & Related Provisions

Materials Provided by:

Richard A. Dove, Esq.

Director

Board of Professional Conduct

D. Allan Asbury, Esq.

Senior Counsel

Board of Professional Conduct

OHIO CODE OF JUDICIAL CONDUCT
(with all amendments through December 1, 2015)

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 4.1 Political and Campaign Activities of Judges and Judicial Candidates

(A) A judge or *judicial candidate* shall not do any of the following:

(1) Act as a leader of, or hold an office in, a *political party*;

(2) Make speeches on behalf of a *political party* or another candidate for public office;

(3) Publicly endorse or oppose a candidate for another public office;

(4) Solicit funds for or make a *contribution* or expenditure of campaign funds to a *political party* or a candidate for public office, except as permitted by division (B)(2) or (3) of this rule;

(5) Comment on any substantive matter relating to a specific case pending on the docket of any judge;

(6) Make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(7) In connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office.

(B) A judge or *judicial candidate* may do any of the following, subject to limitations set forth in this canon:

(1) Attend or speak to a political gathering;

(2) Make a *contribution* or expenditure of campaign funds to purchase a ticket to attend a social or fundraising event held by or on behalf of another public official or candidate for public office;

41
42 (3) Make a *contribution* or expenditure of campaign funds to a *political party*
43 or to purchase a ticket to attend a social event sponsored by a *political party*,
44 provided the *contribution* or expenditure will be used for any of the purposes set
45 forth in R.C. 3517.18(A) and will not be used for any of the purposes set forth in
46 R.C. 3517.18(B).
47

48 **Comment**

49 *General Considerations*

50
51
52 [1] Though subject to public election, a judge plays a role different from that of a
53 legislator or executive branch official. Rather than making decisions based upon the expressed
54 views or preferences of the electorate, a judge makes decisions based upon the law and the facts
55 of each case. Therefore, in furtherance of this interest, judges and judicial candidates must, to
56 the greatest extent possible, be free and appear to be free from political influence and political
57 pressure. Canon 4 imposes narrowly tailored restrictions upon the political and campaign
58 activities of all judges and judicial candidates.
59

60 [2] When a person becomes a judicial candidate, Canon 4 becomes applicable to his
61 or her conduct. See Rule 4.6.
62

63 *Participation in Political Activities*

64
65 [3] Public confidence in the independence and impartiality of the judiciary is eroded
66 if judges or judicial candidates are perceived to be subject to political influence. Although
67 judges and judicial candidates may register to vote as members of a political party, they are
68 prohibited by division (A)(1) from assuming leadership roles in political organizations.
69

70 [4] Divisions (A)(2) and (A)(3) prohibit judges and judicial candidates from making
71 speeches on behalf of political organizations or publicly endorsing or opposing candidates for
72 public office to prevent them from abusing the prestige of judicial office to advance the interests
73 of others. See Rule 1.3. These rules do not prohibit candidates from campaigning on their own
74 behalf or from other permitted conduct. See Rule 4.2(C).
75

76 [5] Although members of the families of judges and judicial candidates are free to
77 engage in their own political activity, including running for public office, there is no “family
78 exception” to the prohibition in division (A)(3) against a judge or candidate publicly endorsing
79 candidates for public office. A judge or judicial candidate must not become publicly involved in,
80 or publicly associated with, a family member’s political activity or campaign for public office.
81 To avoid public misunderstanding, judges and judicial candidates should take, and should urge
82 members of their families to take, reasonable steps to avoid any implication that they endorse
83 any family member’s candidacy or other political activity.
84

85 [6] Judges and judicial candidates retain the right to participate in the political
86 process as voters in both primary and general elections.

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Statements and Comments Made during a Campaign for Judicial Office

[7] Divisions (A)(5) and (A)(6) prohibit judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office.

[8] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. A judge must at all times strive for the respect and confidence of all persons who come before the judge and decide each case on the law and facts presented. Campaigns for judicial office must be conducted differently from campaigns for other offices so as to foster and enhance respect and confidence for the judiciary. Judicial candidates have a special obligation to ensure the judicial system is viewed as fair, impartial, and free from partisanship. To that end, judicial candidates are urged to conduct their campaigns in such a way that will allow them, if elected, to maintain an open mind and uncommitted spirit with respect to cases or controversies coming before them. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[9] Division (A)(7) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[10] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements or announcements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law without regard to his or her personal views.

[11] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

132 [12] Judicial candidates may receive questionnaires or requests for interviews from the
133 media and from issue advocacy or other community organizations that seek to learn their views
134 on disputed or controversial legal or political issues. Division (A)(7) does not specifically
135 address responses to such inquiries. Depending upon the wording and format of such
136 questionnaires, judicial candidates' responses might be viewed as pledges, promises, or
137 commitments to perform the adjudicative duties of office other than in an impartial way. To
138 avoid violating division (A)(7), therefore, candidates who respond to media and other inquiries
139 should also give assurances that they will keep an open mind and will carry out their adjudicative
140 duties faithfully and impartially if elected. Candidates who do not respond may state their
141 reasons for not responding, such as the danger that answering might be perceived by a reasonable
142 person as undermining a successful candidate's independence or impartiality, or that it might
143 lead to frequent disqualification. See Rule 2.11.

144
145 *Permitted Conduct*

146
147 [13] Subject to the other requirements in this canon, a judge or judicial candidate may
148 attend and speak to a political gathering and may make contributions and expend campaign funds
149 to attend a social or fundraising event on behalf of or sponsored by another office holder or
150 candidate.

151
152 **RULE 4.2 Political and Campaign Activities of Judicial Candidates**

153
154 (A) A *judicial candidate* shall be responsible for all of the following:

155
156 (1) Acting at all times in a manner consistent with the *independence, integrity,*
157 *and impartiality* of the judiciary;

158
159 (2) Reviewing and approving the content of all campaign statements and
160 materials produced by the *judicial candidate* or his or her campaign committee
161 before their dissemination;

162
163 (3) The content of any statement communicated in any medium by his or her
164 campaign committee and for compliance by his or her campaign committee with
165 the limitations on campaign solicitations and *contributions* contained in Rule 4.4,
166 if the candidate knew of the statement, solicitation, or *contribution*;

167
168 (4) No earlier than one year prior to or no later than thirty days after
169 certification of his or her candidacy by the election authority, completing a two-
170 hour course in campaign practices, finance, and ethics accredited by the
171 Commission on Continuing Legal Education and certifying such completion within
172 five days of the date of the course to the Board of Commissioners on Grievances
173 and Discipline.

174
175

- 176 (B) A *judicial candidate* shall not do any of the following:
177
178 (1) Jointly raise funds with a candidate for nonjudicial office, except as
179 permitted by division (C) of this rule;
180
181 (2) Appear in a joint campaign advertisement with a candidate for nonjudicial
182 office, except as permitted by division (C) of this rule;
183
184 (3) Expend funds in a judicial campaign that have been contributed to the
185 *judicial candidate* to promote his or her candidacy for a nonjudicial office.
186
187 (C) A *judicial candidate* may do any of the following:
188
189 (1) Conduct joint fundraising activities with other *judicial candidates*;
190
191 (2) Appear in joint campaign advertisements with other *judicial candidates*;
192
193 (3) Participate with *judicial* and nonjudicial *candidates* in fundraising activities
194 organized or sponsored by a *political party*;
195
196 (4) Appear with other candidates for public office on slate cards, sample
197 ballots, and other publications of a *political party* that identify all of the candidates
198 endorsed by the party in an election;
199
200 (5) Seek, accept, or use endorsements from any person or *organization*;
201
202 (6) State in person or in advertising that he or she is a member of, affiliated
203 with, nominee of, or endorsed by a *political party*.
204

205 **Comment**

206
207 [1] A judicial candidate remains subject to Rules 4.1, 4.3, and 4.4, in addition to the
208 requirements of this rule. For example, a candidate continues to be prohibited from soliciting
209 funds for a political party, knowingly making false or misleading statements during a campaign,
210 or making certain promises, pledges, or commitments related to future adjudicative duties. See
211 Rule 4.1(A), 4.3, and 4.4(F).
212

213 [2] In elections for judicial office, a candidate may be nominated by or otherwise
214 publicly identified or associated with a political party. This relationship may be maintained
215 through the period of the campaign, and a judicial candidate may include political party
216 affiliation or similar designations in his or her campaign communications. Although these
217 affiliations and others may be communicated to the electorate, a judicial candidate should
218 consider the effect that partisanship has on the principles of judicial independence, integrity, and
219 impartiality.
220

221 **RULE 4.3 Campaign Standards and Communications**
222

223 During the course of any campaign for nomination or election to judicial office, a
224 *judicial candidate*, by means of campaign materials, including sample ballots,
225 advertisements on radio or television or in a newspaper or periodical, electronic
226 communications, a public speech, press release, or otherwise, shall not *knowingly* or
227 with reckless disregard do any of the following:
228

229 (A) Post, publish, broadcast, transmit, circulate, or distribute information
230 concerning the *judicial candidate* or an opponent, either *knowing* the information to be
231 false or with a reckless disregard of whether or not it was false;
232

233 (B) Manifest bias or prejudice toward an opponent based on race, sex,
234 religion, national origin, disability, age, sexual orientation, or socioeconomic status;
235

236 (C) Use the title of a public office or position immediately preceding or
237 following the name of the *judicial candidate*, when the judicial candidate does not hold
238 that office or position;
239

240 (D) Use the term “judge” when the *judicial candidate* is not a judge unless that
241 term appears after or below the name of the *judicial candidate* and is accompanied by
242 either or both of the following:
243

244 (1) The words “elect” or “vote,” in *prominent lettering*, before the *judicial*
245 *candidate’s* name;
246

247 (2) The word “for,” in *prominent lettering*, between the name of the *judicial*
248 *candidate* and the term “judge;”
249

250 (E) Use the term “former” or “retired” immediately preceding the term “judge”
251 unless the term “former” or “retired” appears each time the term “judge” is used and the
252 term “former” or “retired” appears in *prominent lettering*;
253

254 (F) Use the term “re-elect” in either of the following circumstances:
255

256 (1) When the *judicial candidate* has never been elected at a general or
257 special election to the office for which he or she is a *judicial candidate*;
258

259 (2) When the *judicial candidate* is not the current occupant of the office for
260 which he or she is a *judicial candidate*;
261

262 (G) Misrepresent his or her identity, qualifications, present position, or other
263 fact or the identity, qualifications, present position, or other fact of an opponent;
264

265 (H) Make a false statement concerning the formal schooling or training
266 completed or attempted by a *judicial candidate*; a degree, diploma, certificate,

267 scholarship, grant, award, prize of honor received, earned, or held by a *judicial*
268 *candidate*; or the period of time during which a *judicial candidate* attended any school,
269 college, community technical school, or institution;

270
271 (I) Make a false statement concerning the professional, occupational, or
272 vocational licenses held by a *judicial candidate*, or concerning any position a *judicial*
273 *candidate* held for which he or she received a salary or wages;

274
275 (J) Make a false statement that a *judicial candidate* has been arrested,
276 indicted, or convicted of a crime;

277
278 (K) Make a statement that a *judicial candidate* has been arrested, indicted, or
279 convicted of any crime without disclosing the outcome of all pending or concluded legal
280 proceedings resulting from the arrest, indictment, or conviction;

281
282 (L) Make a false statement that a *judicial candidate* has a record of treatment
283 or confinement for mental disorder;

284
285 (M) Make a false statement that a *judicial candidate* has been subjected to
286 military discipline for criminal misconduct or dishonorably discharged from the armed
287 services;

288
289 (N) Falsely identify the source of a statement, issue statements under the
290 name of another person without authorization, or falsely state the endorsement of or
291 opposition to a *judicial candidate* by a person, *organization*, *political party*, or
292 publication.

293

294 **Comment**

295

296 [1] A judicial candidate must be scrupulously fair and accurate in all statements made
297 by the candidate and his or her campaign committee. This rule obligates the candidate and the
298 committee to refrain from making statements that are false or misleading or that omit facts
299 necessary to make the communication considered as a whole not materially misleading. Also see
300 Rule 4.2.

301

302 [2] A sitting judge, who is a judicial candidate for a judicial office other than the
303 court on which he or she currently serves, violates Rule 4.3(C) if he or she uses the title "judge"
304 without identifying the court on which the judge currently serves.

305

306 [3] The use of the title of a public office or position is reserved for those persons who
307 contemporaneously hold the office by election or appointment. The use of the title by one not
308 entitled by law to the office or position falsely states incumbency and thus is inherently
309 misleading and deceptive. A judicial candidate who uses the title in contravention of the rule is
310 acting in a manner inconsistent with the independence, integrity, and impartiality of the
311 judiciary.

312

313 **RULE 4.4 Campaign Solicitations and Contributions**
314

315 (A) A *judicial candidate* shall not personally solicit campaign *contributions*,
316 except as expressly authorized in this division, and shall not personally receive
317 campaign *contributions*. A *judicial candidate* may establish a campaign committee to
318 manage and conduct a campaign for the candidate, subject to the provisions of this
319 Code. The *judicial candidate* is responsible for ensuring that his or her campaign
320 committee complies with applicable provisions of this Code and other applicable *law*. A
321 *judicial candidate* may solicit campaign contributions in the following manner:
322

323 (1) A *judicial candidate* may make a general request for campaign
324 *contributions* when speaking to an audience of twenty or more individuals;
325

326 (2) A *judicial candidate* may sign letters soliciting campaign *contributions* if
327 the letters are for distribution by the *judicial candidate's* campaign committee and
328 the letters direct *contributions* to be sent to the campaign committee and not to
329 the *judicial candidate*;
330

331 (3) A *judicial candidate* may make a general request for campaign
332 *contributions* via an electronic communication that is in text format if *contributions*
333 are directed to be sent to the campaign committee and not to the *judicial*
334 *candidate*.
335

336 (B) A *judicial candidate* shall prohibit public employees subject to his or her
337 direction or control from soliciting or receiving campaign *contributions*.
338

339 (C) The campaign committee of a *judicial candidate* shall not *knowingly* solicit
340 or receive, directly or indirectly, for any political or personal purpose any of the
341 following:
342

343 (1) A *contribution* from any employee of the court or person who does
344 business with the court in the form of a contractual or other arrangement in which
345 the person, in the current year or any of the previous six calendar years, received
346 as payment for goods or services *aggregate* funds or fees regardless of the
347 source in excess of two hundred fifty dollars. The committee may receive
348 campaign *contributions* from lawyers who are not employees of the court or
349 doing business with the court in the form of a contractual or other arrangement.
350

351 (2) A *contribution* from any appointee of the court unless the campaign
352 committee, on its campaign *contribution* and expenditure statement, reports the
353 name, address, occupation, and employer of the appointee, identifies the person
354 as an appointee of the court, and indicates whether the appointee, in the current
355 year or in any of the previous six calendar years, received *aggregate*
356 compensation from court appointments in excess of two hundred fifty dollars.
357

358 (3) A *contribution* from a *political party* unless the *contribution* is made from a
359 separate fund established by the *political party* solely to receive donations for
360 *judicial candidates* and the *political party* reports on the *contribution* and
361 expenditure statements filed by the party the name, address, occupation, and
362 employer of each person who contributed to the separate fund established by the
363 *political party*.

364 (D) As used in division (C) of this rule:

365 (1) "Appointee" does not include a person whose appointment is approved,
366 ratified, or made by the court based on an intention expressed in a document
367 such as a will, trust, agreement, or contract.

368 (2) "Court" means the court for which the *judicial candidate* is seeking election
369 and, if applicable, the court on which he or she currently serves. If the *judicial*
370 *candidate* is seeking election to a division of a court of common pleas or a
371 municipal court, "court" means the division of the court for which the *judicial*
372 *candidate* is seeking election and, if applicable, the court or division of the court
373 on which he or she currently serves.

374 (3) "Division" means any of the following whether separate or in combination:
375 general division of the court of common pleas; domestic relations division of the
376 court of common pleas; juvenile division of the court of common pleas; probate
377 division of the court of common pleas; housing or environmental division of the
378 municipal court.

379 (4) "Compensation" does not include reasonable reimbursement for travel,
380 meals, and other expenses received by an appointee who serves in a volunteer
381 capacity.

382 (E) The campaign committee of a *judicial candidate* may begin soliciting and
383 receiving *contributions* no earlier than one hundred twenty days before the first Tuesday
384 after the first Monday in May of the year in which the general election is held. If the
385 general election is held in 2012 or any fourth year thereafter, the campaign committee
386 of a *judicial candidate* may begin soliciting and receiving *contributions* no earlier than
387 one hundred twenty days before the first Tuesday after the first Monday in March of the
388 year in which the general election is held. Except as provided in divisions (F) and (G) of
389 this rule, the solicitation and receipt of *contributions* may continue until one hundred
390 twenty days after the general election.

391 (F) If the candidate is defeated prior to the general election, the solicitation
392 and receipt of *contributions* may continue until such time as the *contributions* solicited
393 are sufficient to pay the campaign debts and obligations of the *judicial candidate*
394 incurred on or before the date of the primary election, plus the costs of solicitation
395 incurred after the date of the primary election, but in no event shall the solicitation or
396 receipt of *contributions* continue beyond one hundred twenty days after the date of the
397

404 election at which the defeat occurred. Notwithstanding division (J) of this rule, the limits
405 on *contributions* in a primary election period shall apply to any *contributions* solicited or
406 received by the campaign committee of the defeated *judicial candidate* after the date of
407 the primary election.

408
409 (G) In the case of the death or withdrawal of a *judicial candidate*, the
410 solicitation and receipt of *contributions* may continue until such time as the *contributions*
411 solicited are sufficient to pay the campaign debts and obligations of the *judicial*
412 *candidate* incurred on or before the date of death or withdrawal, plus the costs of
413 solicitation incurred after the date of death or withdrawal, but in no event shall the
414 solicitation or receipt of *contributions* continue beyond one hundred twenty days after
415 the date of death or withdrawal.

416
417 (H) Notwithstanding any provision of division (E) of this rule to the contrary, a
418 *judicial candidate* may do either or both of the following:

419
420 (1) Not more than ninety days prior to the commencement of the one hundred
421 twenty-day fundraising period described in division (E) of this rule, contribute
422 personal funds to his or her campaign committee;

423
424 (2) After the conclusion of the applicable fundraising period described in
425 division (E), (F), or (G) of this rule, contribute personal funds to his or her
426 campaign committee for the express purpose of satisfying any campaign debt
427 that was incurred during the applicable fundraising period and that remains
428 unpaid at the conclusion of the applicable fundraising period. The name of the
429 individual or entity to whom the debt is owed, the amount of the debt, and the
430 date on which the debt was incurred shall be clearly noted on the appropriate
431 campaign contribution and expenditure statement.

432
433 (I) Except as otherwise provided in division (J) of this rule, the campaign
434 committee of a *judicial candidate* shall not directly or indirectly solicit or receive in the
435 fundraising period allowed by division (E), (F), or (G) of this rule a campaign *contribution*
436 *aggregating* more than the following:

437
438 (1) From an individual other than the *judicial candidate* or a member of his or
439 her *immediate family*, three thousand six hundred dollars in the case of a *judicial*
440 *candidate* for chief justice or justice of the Supreme Court, one thousand two
441 hundred dollars in the case of a *judicial candidate* for the court of appeals, or six
442 hundred dollars in the case of a *judicial candidate* for the court of common pleas,
443 municipal court, or county court.

444
445 (2) From any *organization*, six thousand seven hundred dollars in the case of
446 a *judicial candidate* for chief justice or justice of the Supreme Court or three
447 thousand six hundred dollars in the case of all other *judicial candidates*.

448
449 (3) From a *political party*:

- 450
451 (a) Three hundred thirty-three thousand dollars in the case of a *judicial*
452 *candidate* for chief justice or justice of the Supreme Court;
453
454 (b) Seventy-two thousand seven hundred dollars in the case of a
455 *judicial candidate* for the court of appeals;
456
457 (c) Seventy-two thousand seven hundred dollars in the case of a
458 *judicial candidate* for a court of common pleas, municipal court, or county
459 court that serves a territorial jurisdiction with a population of more than
460 seven hundred fifty thousand;
461
462 (d) Sixty thousand five hundred dollars in the case of a *judicial*
463 *candidate* for a court of common pleas, municipal court, or county court
464 that serves a territorial jurisdiction with a population of seven hundred fifty
465 thousand or less;
466
467 (J) If a *judicial candidate* is opposed in a primary election, the campaign
468 committee of that *judicial candidate* shall not directly or indirectly solicit or receive either
469 of the following:
470
471 (1) A campaign *contribution* from an individual or an *organization aggregating*
472 more than the applicable limitation contained in division (I)(1) or (2) of this rule in
473 a primary election period or in a general election period;
474
475 (2) A campaign *contribution* from a *political party aggregating* more than the
476 applicable limitation contained in division (I)(3) of this rule in a general election
477 period or aggregating more than the following during a primary election period:
478
479 (a) One hundred eighty-one thousand six hundred dollars in the case
480 of a *judicial candidate* for chief justice or justice of the Supreme Court;
481
482 (b) Thirty-six thousand three hundred dollars in the case of a *judicial*
483 *candidate* for the court of appeals;
484
485 (c) Thirty-six thousand three hundred dollars in the case of a *judicial*
486 *candidate* for a court of common pleas, municipal court, or county court
487 that serves a territorial jurisdiction with a population of more than seven
488 hundred fifty thousand;
489
490 (d) Thirty thousand three hundred dollars in the case of a *judicial*
491 *candidate* for a court of common pleas, municipal court, or county court
492 that serves a territorial jurisdiction with a population of seven hundred fifty
493 thousand or less.
494

495 (K) As used in division (J) of this rule, “primary election period” begins on the
496 first day on which *contributions* may be solicited and received pursuant to division (E) of
497 this rule and ends on the day of the primary election, and “general election period”
498 begins on the day after the primary election and ends on the last day on which
499 *contributions* may be solicited or received pursuant to division (E) of this rule.

500
501 (L) For purposes of division (I), (J), and (K) of this rule:

502
503 (1) *Contributions* received from *political action committees* that are
504 established, financed, maintained, or controlled by the same corporation,
505 nonprofit corporation, partnership, limited liability company, association,
506 professional association, continuing association, estate, trust, business trust, or
507 other entity, including any parent, subsidiary, local, division, or department of that
508 same corporation, nonprofit corporation, partnership, limited liability company,
509 association, professional association, continuing association, estate, trust,
510 business trust, or other entity, shall be considered to have been received from a
511 single *political action committee*.

512
513 (2) All *contributions* received by a *judicial candidate* from a national, state, or
514 county *political party* shall be combined in applying the limits set forth in division
515 (J)(3) of this rule.

516
517 (3) *In-kind contributions* consisting of goods and compensated services shall
518 be assigned a fair market value by the campaign committee and shall be subject
519 to the same limitations and reporting requirements as other *contributions*.

520
521 (4) A *loan* made to a campaign committee by a person other than the *judicial*
522 *candidate* or a member of his or her *immediate family* shall not exceed an
523 amount equal to two times the applicable *contribution* limit, and amounts in
524 excess of the applicable *contribution* limit shall be repaid within the fundraising
525 period allowed by division (E) of this rule. A debt remaining at the end of the
526 fundraising period shall be treated as a *contribution* and subject to the applicable
527 *contribution* limit.

528
529 (5) A debt incurred by a judge or *judicial candidate* in a previous campaign for
530 public office and forgiven by the individual, *organization*, or *political party* to
531 whom the debt is owed shall not be considered a campaign *contribution*.

532
533 (M) In applying the *contribution* limits contained in division (I) and (J) of this
534 rule, the *contributions* of an individual or *organization* to a *judicial candidate* fund
535 established by a *political party* shall not be *aggregated* with other *contributions* from the
536 same individual or *organization* made directly to the campaign committee of a *judicial*
537 *candidate* unless the campaign committee of the *judicial candidate* directly or indirectly
538 solicited the *contribution* to the *judicial candidate* fund.

539

540 (N) On or before the first day of December beginning in 2008 and every four
 541 years thereafter, the secretary of the Board of Commissioners on Grievances and
 542 Discipline shall determine the percentage change over the preceding forty-eight months
 543 in the Consumer Price Index for All Urban Consumers, or its successive equivalent, as
 544 determined by the United States Department of Labor, Bureau of Labor Statistics, or its
 545 successor in responsibility, for all items, Series A. The secretary shall apply that
 546 percentage change to the *contribution* limitations then in effect and notify the Supreme
 547 Court of the results of that calculation. The Supreme Court may adopt revised
 548 *contribution* limitations based on the secretary's calculation or other factors that the
 549 Court considers appropriate.

550
 551 **CONTRIBUTION LIMITS**
 552 **Effective January 1, 2013**
 553
 554

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

555 *Primary limits apply only if the judicial candidate has a contested primary. If
 556 there is no contested primary, the general election limits apply throughout the
 557 permissible fundraising period.
 558

559 **Comment**
 560

561 [1] A judicial candidate is prohibited from personally soliciting campaign
 562 contributions and personally receiving campaign contributions. These limitations protect four
 563 vital interests: (1) avoiding the appearance of coercion or *quid pro quo*, especially when a
 564 judicial candidate engages in a one-on-one solicitation of a lawyer or party who appears before
 565 the court; (2) preserving both the appearance and reality of an impartial, independent, and
 566 noncorrupt judiciary; (3) ensuring the public's right to due process and fairness; and (4)
 567 furthering the public trust and confidence in the impartiality of the judicial decision-maker. Rule
 568 4.4(A) recognizes that some forms of solicitation are less coercive and less intrusive than others
 569 and permits a candidate to engage in solicitations that are less personal and directed at a wider
 570 audience. A judicial candidate who directly solicits campaign contributions in a manner
 571 authorized by Rule 4.4(A)(1)-(3) is subject to the limitations relating to the solicitation and
 572 receipt of campaign contributions contained in Canon 4. Public employees subject to the

573 direction or control of a judicial candidate are prohibited from soliciting or receiving campaign
574 contributions.

575
576 [2] A judicial candidate may establish a judicial campaign committee to solicit and
577 accept campaign contributions, manage the expenditure of campaign funds, and generally
578 conduct the campaign. In so doing, the campaign committee shall follow the provisions of the
579 rule regarding the solicitation and receipt of contributions. A campaign committee shall follow
580 all time guidelines controlling when judicial fundraising shall begin and end in reference to a
581 particular judicial election.

582
583 [3] The campaign committee may accept contributions that do not exceed the
584 limitations established for individuals, organizations, and political parties. The judicial candidate
585 is responsible under Rule 4.2(A)(3) for compliance by his or her campaign committee with the
586 limitations established on campaign solicitations and contributions.

587
588 **RULE 4.5 Activities of a Judge Who Becomes a Candidate for**
589 **Nonjudicial Office**

590
591 Upon becoming a candidate in a primary or general election for a nonjudicial
592 elective office, a judge shall resign from judicial office. A judge may continue to hold
593 judicial office while he or she is a candidate for election to or serving as a delegate in a
594 state constitutional convention, if the judge is otherwise permitted by law to do so.

595
596 **Comment**

597
598 [1] In campaigns for nonjudicial elective public office, candidates may make pledges,
599 promises, or commitments related to positions they would take and ways they would act if
600 elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is
601 inconsistent with the role of a judge, who must remain fair and impartial to all who come before
602 him or her. The potential for misuse of the judicial office, and the political promises that the
603 judge would be compelled to make in the course of campaigning for nonjudicial elective office,
604 together dictate that a judge who wishes to run for such an office must resign upon becoming a
605 candidate.

606
607 [2] The “resign to run” rule ensures that a judge cannot use the judicial office to
608 promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event
609 the judge is defeated in the election.

610
611 **RULE 4.6 Definitions**

612
613 As used in Canon 4:

614
615 (A) “Aggregate” means not only contributions in cash or in-kind made directly
616 to a candidate’s campaign committee, but also all contributions made indirectly with the
617 understanding that they will be used to support the election of a candidate or to oppose
618 the election of the candidate’s opponent.

619
620 (B) "Contribution" has the same meaning as in R.C. 3517.01 and includes an
621 in-kind contribution.
622

623 (C) "Immediate family" means a spouse or domestic partner or any of the
624 following who are related by blood or marriage to the judicial candidate:
625

- 626 (1) Parent;
- 627
- 628 (2) Child;
- 629
- 630 (3) Brother or sister;
- 631
- 632 (4) Grandparent;
- 633
- 634 (5) Grandchild;
- 635
- 636 (6) Uncle or aunt;
- 637
- 638 (7) Nephew or niece;
- 639
- 640 (8) Great-grandparent;
- 641
- 642 (9) First cousin.
- 643

644 (D) "Domestic partner," "independence," "integrity," "impartiality," "impending,"
645 and "pending" have the same meaning as in the Terminology section of this code.
646

647 (E) "In-kind contribution" has the same meaning as in R.C. 3517.01.
648

649 (F) "Judicial candidate" means a person who has made a public
650 announcement of candidacy for judicial office, declared or filed as a candidate for
651 judicial office with the election authority, or authorized the solicitation or receipt of
652 contributions or support for judicial office, whichever occurred first.
653

654 (G) "Knowingly" means actual knowledge of the fact in question. A person's
655 knowledge may be inferred from circumstances.
656

657 (H) "Law firm" means a lawyer or lawyers in a law partnership, professional
658 corporation, sole proprietorship, or other association authorized to practice law or
659 lawyers engaged in a private or public legal aid or public defender organization, a legal
660 services organization, the legal department of a corporation or other organization, or the
661 attorney general, prosecuting attorney, law director, or other public office.
662

663 (I) "Loan" means an advance of money with an absolute promise to pay, with
664 or without interest, and includes loan guarantees.

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(J) "Organization" means any entity or combination of two or more persons, other than a political party, including, but not limited to, a corporation, nonprofit corporation, partnership, limited liability company, association, professional association, continuing association, estate, trust, business trust, political action committee as defined in R.C. 3517.01, law firm, organization affiliated with a political party, labor organization, campaign committee of another candidate for public office, or caucus campaign committee.

(K) "Organization affiliated with a political party" means a combination of two or more persons, other than a political party or an organization, that is identified by its name or association with a national, state, or county political party or expressly promotes the interests, philosophy, or candidates of a political party.

(L) "Political action committee" has the same meaning as in R.C. 3517.01.

(M) "Political party" has the same meaning as in R.C. 3517.01 and includes any national, state, or county political party.

(N) "Prominent lettering" means 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.

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**SUPREME COURT RULES FOR THE
GOVERNMENT OF THE JUDICIARY OF OHIO¹**

* * *

RULE II. Disciplinary Procedure.

* * *

Section 5. Campaign Conduct; Enforcement and Sanctions.

Notwithstanding Section 2 of this rule, a grievance that alleges a violation by a judicial candidate of Canon 4 of the Code of Judicial Conduct during the course of a campaign for judicial office shall be brought, conducted, and disposed of in accordance with this rule and Gov. Bar R. V, as modified by this section. All other grievances shall be brought, conducted, and disposed of in accordance with this rule and Gov. Bar R. V.

(A) Filing of grievance; preliminary review; referral.

(1) A grievance that alleges a violation by a judicial candidate of Canon 4 of the Code of Judicial Conduct during the course of a campaign for judicial office shall be filed with the secretary of the Board of Commissioners on Grievances and Discipline. Within two days of receiving the grievance, the secretary shall conduct a preliminary review. If the secretary is unable to conduct the preliminary review because of a conflict of interest, he or she immediately shall forward the grievance to the chair of the Board who shall conduct the preliminary review. If the chair has a conflict of interest or is unavailable, the secretary immediately shall forward the grievance to the vice-chair of the Board who shall conduct the preliminary review.

(2) If a judicial candidate files a grievance alleging a violation by his or her opponent of Canon 4 of the Code of Judicial Conduct and the judicial candidate and his or her opponent have signed an agreement with a voluntarily organized judicial election monitoring committee that provides for expedited consideration of alleged violations of Canon 4 of the Code of Judicial Conduct, the secretary may refer the grievance to the monitoring committee for consideration. The secretary shall not refer the grievance to the monitoring committee if the judicial candidate has exhausted the remedies provided for under the agreement.

(3) The secretary, chair, or vice-chair may refer a grievance to the Disciplinary Counsel under any of the following circumstances:

(a) The probable cause panel fails to find probable cause that a violation of Canon 4 has occurred;

¹ References in Gov. Jud. R. II to the Board of Commissioners on Grievances and Discipline and secretary of the Board will be amended in early 2015 to reflect the redesignation of the Board as the Board of Professional Conduct and of the secretary as director.

729
730 (b) Secretary, chair, or vice-chair determines that it is unnecessary to handle
731 the grievance on an expedited basis;
732

733 (c) The complainant withdraws the grievance or fails to prosecute the
734 complaint before the Board hearing panel, five-judge commission, or Supreme Court.
735

736 (B) *Probable cause panel; filing of formal complaint.* If, after reviewing
737 the grievance, the secretary, chair, or vice-chair determines that the grievance is facially
738 valid, that the Board has jurisdiction over the matters raised in the grievance, and that
739 the grievance should be considered on an expedited basis, the secretary immediately
740 shall appoint three members of the Board to determine whether there is probable cause
741 that a violation of Canon 4 has occurred. No member of the probable cause panel shall
742 be a resident of the judicial district from which the grievance arose. The probable cause
743 panel shall determine probable cause within five days after the grievance was filed and
744 may conduct a hearing to facilitate the determination of probable cause. If the probable
745 cause panel finds probable cause that a violation of Canon 4 has occurred, the panel
746 shall notify the secretary who shall prepare a formal complaint based on instructions
747 from the probable cause panel.
748

749 (C) *Appointment of hearing panel; proceedings on the formal complaint.*
750

751 (1) Within three days of the probable cause determination, the chair shall
752 appoint three members of the Board to conduct a formal hearing on the complaint. One
753 member of the hearing panel shall be a nonattorney member of the Board, and no
754 member of the hearing panel shall be a resident of the judicial district in which the
755 complaint arose. The secretary shall forward a copy of the complaint to each member
756 of the hearing panel, the complainant, and the respondent.
757

758 (2) The chair or secretary may designate former members of the Board to
759 serve on probable cause and hearing panels appointed pursuant to divisions (B) and
760 (C)(1) of this section.
761

762 (3) Within five days of its appointment, the hearing panel shall conduct a
763 formal hearing limited to the allegations contained in the complaint. The complainant
764 and respondent shall be notified of the hearing. Within five days after conclusion of the
765 hearing, the hearing panel shall issue a report of its findings and recommendations. If
766 the hearing panel determines by clear and convincing evidence that a violation of
767 Canon 4 has occurred, the hearing panel's report and the record of the proceeding shall
768 be certified to the Supreme Court, together with a recommendation as to whether the
769 complaint should be considered on an expedited basis and whether the five-judge
770 commission appointed pursuant to division (D) of this section should issue a cease and
771 desist order pursuant to division (D)(2) of this section. If the hearing panel determines
772 by clear and convincing evidence that a violation of Canon 4 has occurred, the hearing
773 panel shall determine whether the respondent previously has been found to have
774 violated Canon 4 and include the determination in its report.

775 (D) *Appointment of five-judge commission; proceedings before the*
776 *commission.*

777
778 (1) Within five days of receiving the report, the Supreme Court shall appoint a
779 commission of five judges as provided in section 2701.11 of the Revised Code and Gov.
780 Jud. R. III. The commission shall expedite its consideration of the report and may make
781 its determination from the report of the hearing panel, permit or require the filing of
782 briefs, conduct oral argument, or order the hearing panel to take additional evidence. If
783 the commission concludes the record supports the hearing panel's finding that a
784 violation of Canon 4 has occurred and there has been no abuse of discretion by the
785 hearing panel, the commission may enter an order that includes one or more of the
786 following:

787
788 (a) A disciplinary sanction against the respondent;

789
790 (b) An order enforceable by contempt of court that the respondent cease and
791 desist from engaging in the conduct that was found to be in violation of Canon 4;

792
793 (c) A fine imposed against the respondent;

794
795 (d) An assessment against the respondent of the costs of the proceeding;

796
797 (e) An assessment against the respondent of the reasonable and necessary
798 attorneys fees incurred by the complainant in prosecuting the grievance.

799
800 (2) Upon recommendation of the hearing panel, motion of the complainant or
801 *sua sponte*, the commission may enter an interim cease and desist order as it finds
802 reasonable and necessary prior to making the determination required by division (D)(1)
803 of this section. The interim order shall be based on the commission's preliminary
804 review of the report and recommendation of the hearing panel and any record made
805 before the commission.

806
807 (3) A party may allege the existence of bias, prejudice, or other disqualifying
808 factor on the part of a judge appointed by the Supreme Court to serve on a commission
809 of five judges by filing a motion with the Chief Justice of the Supreme Court. The
810 motion shall be filed within three days of the date the party receives notice of the
811 appointment of the commission. If the Chief Justice finds the existence of bias,
812 prejudice, or other disqualifying factor, the judge named in the motion shall be
813 disqualified, and the Supreme Court shall appoint a substitute judge.

814
815 (E) *Appeal of sanction.*

816
817 The respondent may appeal a sanction issued by the commission to the
818 Supreme Court. Notice of appeal shall be given by the respondent to the secretary of
819 the commission and the Supreme Court within twenty days after the respondent's

820 receipt by certified mail of the commission's order. After receipt of the notice of appeal,
821 the Court may issue a briefing order and other appropriate orders.
822

823 **Section 6. Campaign Conduct; Enforcement and Sanctions; Justices and**
824 **Candidates for the Supreme Court.**
825

826 A grievance that alleges a violation by a judicial candidate for the Supreme Court
827 of Canon 4 of the Code of Judicial Conduct during the course of a campaign for judicial
828 office shall be brought, conducted, and disposed of in accordance with this section.
829

830 (A) *Initial review.*
831

832 (1) The grievance shall be filed with the Secretary of the Board of
833 Commissioners on Grievances and Discipline. The Secretary shall promptly forward the
834 grievance and any supporting documentation to the Chief Justice of the Courts of
835 Appeals, elected pursuant to section 2501.03 of the Revised Code. Within two days of
836 receiving the grievance, the Chief Judge shall review the grievance to determine
837 whether the grievance alleges a violation of Canon 4 by a judicial candidate for the
838 Supreme Court and whether the grievance should be considered on an expedited basis.
839 If the Chief Judge determines that no Canon 4 violation is alleged or that the grievance
840 should not be considered on an expedited basis, he or she may dismiss the grievance
841 and notify the grievant of such determination or proceed with a review of the grievance
842 pursuant to Section 4 of this rule.
843

844 (2) If the Chief Judge determines that the grievance alleges a violation of
845 Canon 4 by a judicial candidate for the Supreme Court and that the grievance should be
846 considered on an expedited basis, the Chief Judge shall immediately refer the
847 grievance to a three-member review panel selected, by lot, from among the judges
848 designated pursuant to Section 4(A)(3) of this rule. The review panel shall contact the
849 judicial candidate named in the grievance for a written response, and determine from
850 the grievance and the response whether probable cause exists that a violation of Canon
851 4 occurred. The review panel may conduct a hearing to facilitate the determination of
852 probable cause. The probable cause determination shall be made within five days after
853 the grievance was received by the Chief Judge.
854

855 (3) The review panel shall notify the Chief Judge of its probable cause
856 determination and, if applicable, instructions regarding the preparation of a formal
857 complaint. If the review panel finds no probable cause, the Chief Judge shall dismiss
858 the grievance and notify the grievant. If the review panel finds probable cause, the
859 Chief Judge shall instruct the Secretary of the Board of Commissioners on Grievances
860 and Discipline to prepare a formal complaint in accordance with the instructions of the
861 probable cause panel and in the name of the grievant as relator. Upon preparation of
862 the formal complaint, the Secretary shall serve a copy of the formal complaint on the
863 relator and respondent and transmit a copy to the Chief Judge.
864
865

866 (B) *Appointment of hearing panel; proceedings on the formal complaint.*
867

868 (1) Within three days of a determination that probable cause exists to support
869 the preparation and prosecution of a formal complaint, the Chief Judge shall appoint a
870 hearing panel of three fulltime trial court judges selected, by lot, from the list of judges
871 developed and maintained pursuant to Section 4(C)(5) of this rule. The judges chosen
872 shall be from separate appellate districts and shall not be from the district in which the
873 respondent resides. The Chief Judge shall designate one of the judges to serve as the
874 chair of the hearing panel.

875
876 (2) Within five days of appointment and with notice to the parties, the hearing
877 panel shall hold a hearing on the complaint. All hearings shall be recorded by a court
878 reporter and a transcript included in the record of the proceedings.

879
880 (3) Within five days of the conclusion of the hearing, the hearing panel shall
881 prepare and issue a report of its findings and recommendations. If the panel finds, by
882 clear and convincing evidence, that the respondent violated Canon 4 of the Code of
883 Judicial Conduct and that a sanction for such violation is warranted, the hearing panel's
884 report and the record of the proceedings shall be certified to the Secretary, together with
885 a recommendation as to whether the complaint should be considered on an expedited
886 basis and whether the five-judge commission appointed pursuant to division (C) of this
887 section should issue a cease and desist order pursuant to division (C)(2) of this section.
888 If the hearing panel determines, by clear and convincing evidence, that a violation of
889 Canon 4 has occurred, the hearing panel shall determine whether the respondent
890 previously has been found to have violated Canon 4 and include the determination in its
891 report. The Secretary shall provide a copy of the hearing panel's report to the Chief
892 Judge and send a copy of the hearing panel's report to the relator and respondent by
893 certified mail.

894
895 (C) *Appointment of five-judge commission; proceedings before the*
896 *commission.*
897

898 (1) Within five days of the issuance of the hearing panel's report, the Chief
899 Judge shall appoint a commission of five appellate judges, chosen by lot from separate
900 appellate districts. The Chief Judge shall designate one of the judges to serve as chair
901 of the panel. No appellate judge who served on the panel that reviewed the allegations
902 for probable cause shall be appointed to serve on the commission.

903
904 (2) Unless otherwise recommended by the hearing panel, the commission
905 shall expedite its consideration of the report and may make its determination from the
906 report of the hearing panel, permit or require the filing of briefs, conduct oral argument,
907 or order the hearing panel to take additional evidence. If the commission concludes the
908 record supports the hearing panel's finding that a violation of Canon 4 has occurred and
909 there has been no abuse of discretion by the hearing panel, the commission may enter
910 an order that includes one or more of the sanctions set forth in Section 5(D)(1) of this
911 rule. Upon recommendation of the hearing panel or *sua sponte*, the commission may

912 enter an interim cease and desist order as it finds reasonable and necessary prior to
913 making a determination on the hearing panel's report. The interim order shall be based
914 on the commission's preliminary review of the report and recommendation of the
915 hearing panel and any record made before the commission.

916
917 (3) The commission's determination and any cease and desist order shall be
918 sent to the Secretary who shall provide a copy to the Chief Judge and serve a copy on
919 the respondent and relator by certified mail. At the conclusion of all proceedings before
920 the hearing panel, the Secretary shall file the record of such proceedings with the Clerk
921 of the Supreme Court as provided in division (F)(1) of this section.

922
923 (D) *Appeal of sanction.*

924
925 (1) The respondent may appeal a sanction issued by the commission. The
926 notice of appeal shall be filed by the respondent with the Clerk of the Supreme Court
927 within twenty days after the receipt by certified mail of the commission's order. The
928 Clerk shall provide a copy of the notice of appeal to the Chief Judge and send a copy to
929 the relator by certified mail.

930
931 (2) Within five days of receipt of the notice of appeal, the Chief Judge shall
932 convene an adjudicatory panel of thirteen appellate judges. The adjudicatory panel
933 shall consist of the Chief Judge, who shall preside over the panel, and the presiding
934 judge of each appellate district. No appellate judge who served on the panel that
935 reviewed the allegations for probable cause or who served on the commission to review
936 the report of the hearing panel shall be appointed to serve on the adjudicatory panel. If
937 a presiding judge of an appellate district is unavailable to serve on the adjudicatory
938 panel, the appellate judge of the district who is senior in service on the court of appeals
939 shall replace the presiding judge.

940
941 (3) The adjudicatory panel may establish a briefing schedule and make other
942 appropriate orders. All orders of the adjudicatory panel shall be issued upon
943 instructions from the panel by the Clerk who shall send the orders by certified mail.

944
945 (E) *Failure to prosecute.* If, after probable cause has been found, the
946 relator attempts to withdraw the grievance or otherwise fails to prosecute the formal
947 complaint, the Chief Judge shall appoint a special disciplinary counsel who possesses
948 the qualifications set forth in Section 4(B)(3) of this rule. Upon appointment, the special
949 disciplinary counsel shall act as relator in the pending matter.

950
951 (F) *Miscellaneous provisions.*

952
953 (1) Upon the filing of a formal complaint, the Secretary of the Board of
954 Commissioners on Grievances and Discipline shall serve as clerk for the Chief Judge,
955 the hearing panel, and the five-judge commission. The relator and respondent shall file
956 all pleadings, motions, documents, and other material with the Secretary, who shall
957 transmit the documents and materials to the Chief Judge and the appropriate panel.

958 The Chief Judge, the panel, and the five-judge commission shall transmit all orders,
959 opinions, and other materials to the Secretary for service on or distribution to the
960 parties. The Secretary shall maintain a complete record of the proceedings and, upon
961 conclusion of the proceedings before the hearing panel and five-judge commission,
962 certify the record, including exhibits, to the Clerk of the Supreme Court who shall
963 maintain the certified record. The Clerk shall serve as clerk for the adjudicatory panel,
964 and all proceedings before the adjudicatory panel shall be conducted as provided in this
965 section and the Rules of Practice of the Supreme Court of Ohio. Upon request, the
966 Secretary and Clerk shall assist the Chief Judge, hearing panel, five-judge commission,
967 and adjudicatory panel with ministerial matters such as scheduling a location for
968 hearings and securing a court reporter.

969
970 (2) If a judge selected to serve on any panel appointed pursuant to Section 6
971 of this rule is unable to serve because of the existence of a disqualifying factor, the
972 judge shall notify the Chief Judge and provide written justification of the grounds for
973 disqualification.

974
975 (3) The Chief Judge and any judge appointed to serve in any capacity
976 pursuant to Section 6 of this rule shall continue to serve in the appointed capacity until
977 the conclusion of the matter as long as the judge continues to hold judicial office. If the
978 Chief Judge leaves judicial office while a matter commenced under this rule during his
979 or her tenure remains pending, the successor Chief Judge shall assume responsibility
980 for that matter. If a judge appointed to serve in any capacity under this rule leaves
981 judicial office while a matter to which the judge was assigned under this rule remains
982 pending, the Chief Judge shall designate a judge to replace the former judge in the
983 same manner as the original appointment was made.

984
985 (4) A party may allege the existence of bias, prejudice, or other disqualifying
986 factor on the part of a judge appointed to serve on a panel or commission pursuant to
987 Section 6 of this rule by filing a motion with the Chief Judge. The motion shall be filed
988 within three days of the date the party receives notice of the appointment of the panel or
989 commission. If the Chief Judge finds the existence of bias, prejudice, or other
990 disqualifying factor, the judge named in the motion shall be disqualified, and the Chief
991 Judge shall designate a judge to replace the disqualified judge in the same manner as
992 the original appointment was made.

993
994 **Section 7. Miscellaneous Provisions.**

995
996 The following provisions apply to proceedings under Sections 5 and 6 of this rule.

997
998 (A) Unless the justice, judge, or judicial candidate against whom a grievance
999 has been filed agrees otherwise, the grievance shall remain private until the probable
1000 cause panel has made a determination of probable cause. After a determination of
1001 probable cause has been made, the grievance, formal complaint, report of the hearing
1002 panel, order of the five-judge commission of five judges, record of the proceedings, and
1003 all hearings shall be public.

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(B) If any panel or commission of judges determines that the grievance was frivolous or filed solely for the purpose of obtaining an advantage for a judicial candidate, the panel or commission, in addition to any other order considered proper, may assess against the complainant the costs of the proceeding and any reasonable and necessary attorney fees incurred by the respondent in defending the grievance.

(C) In recommending, imposing, or reviewing a sanction for a violation of Canon 4, the panel or commission of judges shall consider any prior violations by the respondent and may increase the severity of the sanction recommended or imposed for the violation pending before the panel or commission.

(D) Any sanction imposed by the five-judge commission or adjudicatory panel shall be published by the Supreme Court Reporter in the manner prescribed in Rule V, Section 8 of the Supreme Court Rules for the Government of the Bar of Ohio and noted in the public records maintained by the Supreme Court Office of Attorney Services.

(E) The Board may adopt regulations to facilitate and implement the expeditious consideration of grievances and complaints filed under Sections 5 and 6 of this rule. A panel may extend the time requirements contained in Sections 5 and 6 of this rule on its own motion, on agreement of the parties, or on motion of a party for good cause shown. In considering an extension of the time requirements, the panel shall consider all of the following:

- (1) The immediacy of the alleged violation;
- (2) The complexity of the complaint;
- (3) When the parties received notice of the hearing;
- (4) Whether a weekend or legal holiday intervenes to shorten the applicable time period;
- (5) The parties' difficulty in obtaining documentation or witnesses, or both, to prove or defend an allegation.

(F) Any judge selected to serve on a commission appointed pursuant to Section 5 of this rule or to a panel or commission appointed pursuant to Section 6 of this rule shall be reimbursed from the Attorney Services Fund for travel expenses incurred in association with the judge's service on the panel or commission. Reimbursement for travel expenses shall be made as provided in the Supreme Court Guidelines for Travel by Court Appointees. A judge appointed to a commission pursuant to Section 5 of this rule shall request reimbursement by submitting a signed Travel Expense Report form and required receipts to the Administrative Director of the Supreme Court. A judge appointed to a panel or commission pursuant to Section 6 of this rule shall request reimbursement by submitting a signed Travel Expense Report form and required

1050 receipts to the Chief Judge of the Courts of Appeals. The Chief Judge shall indicate
1051 approval of the reimbursement request and submit the approved form to the
1052 Administrative Director of the Supreme Court.

1053

1054 **Section 8. Definitions.**

1055

1056 As used in this rule:

1057

1058 (A) "Complaint," "probable cause," and "misconduct" have the same meanings
1059 as in Gov. Bar R. V;

1060

1061 (B) "Costs" means expenses incurred by the Board of Commissioners on
1062 Grievances and Discipline, the Supreme Court, and any panel or commission of judges
1063 in conducting proceedings under this rule;

1064

1065 (C) "Disciplinary sanction" means any of the sanctions set forth in Gov. Bar R.
1066 V, Section 6, removal, or suspension from office;

1067

1068 (D) "Good cause," for purposes of Sections 4(A) and (B)(1) of this rule, means
1069 that, based on a review of a grievance and any response received, there exists an
1070 articulable legal and factual basis to warrant further investigation of the allegations
1071 contained in the grievance;

1072

1073 (E) "Judicial candidate" has the same meaning as in Rule 4.6 of the Code of
1074 Judicial Conduct.

Ethics Opinions and Cases

through December 1, 2015

Materials Provided by:

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Board of Professional Conduct
Advisory Opinions Relative to Judicial Campaign Conduct and Fundraising

Op. No. 87-02 (May 7, 1987)	Use of the term “reelect” in judicial campaign
Op. No. 88-7 (April 25, 1988)	Judges should not engage in the business of consulting for political candidates
Op. No. 89-15 (June 16, 1989)	Use of the title “judge;” joint advertising and endorsements; independent fundraising activities
Op. No. 90-24 (December 14, 1990)	Judges and referees may make contributions to candidates and political parties; referees may not make direct or indirect contributions to judges of the court on which they serve
Op. No. 92-11 (April 10, 1992)	Judges and judicial candidates may sign nominating petitions for judicial and nonjudicial candidates
Op. No. 93-9 (October 15, 1993)	Participation in a parade
Op. No. 97-6 (October 10, 1997)	Creation of campaign committee by incumbent judge; expenditure of carryover funds outside the fundraising period
Op. No. 98-7 (June 5, 1998)	Termination by judicial candidate of a nonjudicial campaign committee and disbursement of nonjudicial campaign funds
Op. No. 98-8 (June 5, 1998)	Service on political party executive committee or county board of elections
Op. No. 98-11 (October 9, 1998)	Acceptance of campaign contributions from an elected clerk of court and employees of the clerk
Op. No. 01-01 (February 2, 2001)	Campaign conduct by a judge whose spouse is a candidate for public office.
Op. No. 02-03 (April 5, 2002)	Scope of a judge's permissible communication on proposed constitutional amendment regarding drug treatment.
Op. No. 02-08 (August 9, 2002)	Guidelines on scope of permissible judicial campaign speech.

Op. No. 02-13 (October 4, 2002)	Campaign activities by magistrates on behalf of judicial candidates.
Op. No. 03-8 (December 5, 2003)	Use of title and appearance in a robe by magistrates running for judicial office; use of campaign funds by judges, judicial candidates, and magistrates pursuant to former Canon 7(C)(7).
Op. No. 09-11 (December 4, 2009)	Charitable contributions from personal or judicial campaign funds.
Op. No. 2010-7 (December 3, 2010)	Judicial use of and participation in social networking sites.
Op. No. 2014-1 (January 31, 2014)	Standard for disqualification when counsel is a participant in a judge's current campaign.

DISCIPLINARY SANCTIONS IMPOSED FOR JUDICIAL CAMPAIGN VIOLATIONS¹

<p>Suspension (partially stayed): <i>D. O'Neill</i>²** (\$4,600)</p>	<p>Stayed Suspension and Other Sanctions: Hildebrandt* (\$23,000) Beery (\$16,400)</p>	<p>Stayed Suspension: <i>Evans</i>** (\$1,000) <i>Kaup</i>* (\$1,000)</p>
<p>Public Reprimand, Fine, and Attorney Fees: Burick* (\$13,900) Hein* (\$7,600) Kienzle* (\$6,700) Davis* (\$15,700) <i>O'Toole</i>* (\$6,000)</p>	<p>Public Reprimand and Fine: Lilly II** (\$3,300) Michael II* (\$6,300)</p>	<p>Public Reprimand and Attorney Fees: PerDue II (\$3,700)</p>
<p>Public Reprimand: <i>Harper</i> (\$1,300) Morris* (\$100) <i>Spicer</i> (\$1,800)</p>	<p>Fine and Attorney Fees: Brigner** (\$2,200) Michael I* (\$6,100) <i>Moll</i>** (\$7,100)</p>	<p>Fine Only: <i>Carr</i> (\$2,600) Emrich (\$1,450) Roberts (\$200) PerDue I (\$300) O'Reilly (\$6,600) Lilly I (\$1,600)</p>
<p>Other: Keyes/Tailer (cease and desist order)</p>		

NOTES:

- Cases in *italics* were decided by the Supreme Court of Ohio
- Fines appear in parenthesis
- * indicates the sanction imposed was more severe than initially recommended
- ** indicates the sanction was less than initially recommended

¹ All sanctions include an order to pay costs of the proceeding, unless otherwise indicated. Figures in parentheses represent the total of all fines, costs, and attorney fees imposed against respondent and are rounded to the nearest \$100.

² *O'Neill* involved misconduct in addition to judicial campaign misconduct.

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<i>Judicial Campaign Complaint against O’Toole</i>	Page 52

CASE SUMMARIES
(July 1995 through December 2014)¹

- *In re Judicial Campaign Complaint against Carr* (1995), 74 Ohio Misc.2d 81; *aff'd* (1996), 76 Ohio St.3d 320.

In a letter, respondent claimed that her opponent had never handled a single case in housing court as an attorney. In a separate letter from her campaign committee to potential donors, respondent included hand-written notes such as “We need your help now! (signed) Cathleen”

Respondent was found to have knowingly misrepresented her opponent’s qualifications in violation of Canon 7(B)(2)(f) and to have personally solicited contributions in violation of Canon 7(C)(2)(a). In addition to a cease and desist order and costs, the Board hearing panel recommended a fine of \$500 for each violation.

The five-judge commission appointed to review the panel’s report unanimously affirmed the panel’s finding of a personal solicitation and affirmed, by a vote of 3-2, the finding of a knowing misrepresentation of an opponent’s qualifications. The commission also found that the panel’s denial of a continuance requested by the respondent was not an abuse of discretion and did not deny the respondent her right to due process.

On appeal, the Supreme Court affirmed the commission’s order by a vote of 6-1, holding that the panel’s denial of the requested continuance and adherence to the expedited time frames in Gov. Jud. R. II, Section 5 was not error. Specifically, the Court noted that the issues presented were simple and straightforward and required little preparation. The Court also noted the respondent’s lack of cooperation, failure to present evidence to refute the charges against her, and failure to appear at the hearing before the Board panel.

The Court also established a balancing test to be used to determine the expediency with which future cases are to be processed. In balancing the parties’ right to a hearing with the parties’ due process rights, the Board is instructed to consider: (1) the immediacy of the alleged violation; (2) the complexity of the complaint; (3) when the respondent received notice of the hearing; (4) whether a weekend intervenes to shorten the five-day hearing time contained in Gov. Jud. R. II, Section 5; and (5) the parties’ difficulty in obtaining documentation and witnesses to prove the case.

¹ Omitted from this case summary are cases dismissed after a formal complaint is filed and cases that apply a rule subsequently repealed by the Supreme Court.

- *In re Judicial Campaign Complaint against Emrich* (1996), 78 Ohio Misc.2d 32; appeal dismissed as untimely filed (1996), 76 Ohio St.3d 1431.

Respondent was a county court judge running for the probate division of the court of common pleas. In billboards and yard signs, respondent used terms such as “Elect Judge Emrich to Probate Court.” He was charged with using the title of “judge” in a way to imply that he currently was serving as the probate division judge, in violation of Canons 7(B)(2)(f), (D)(1), and (E)(1), and with failing to timely file a judicial qualifications statement, as required by Canon 7(B)(6).

Relying on Board of Commissioners Advisory Opinion 89-15, the commission concluded that the respondent had violated Canon 7 by using the title “judge” without specifying the court on which the judge currently serves. The commission cited to the respondent’s testimony, which indicated that he was aware of Advisory Opinion 89-15 and had reviewed and approved of all advertisements that were subject of the complaint. The commission adopted the Board hearing panel’s recommendation of a cease and desist order and fines of \$250 for the advertising violation and \$100 for failing to timely file the statement of judicial qualifications.

- *In re Judicial Campaign Complaint against Keys and Tailer* (1996), 80 Ohio Misc.2d 1.

Two judicial candidates agreed to have their names placed on an invitation to a fundraiser for another candidate for public office. The respondents’ names were included as members of the host committee for that event under the heading of “Please join the Hamilton County legal community in supporting Eve Bolton’s reelection for Recorder.” Upon learning that the inclusion of their names on the invitation was in violation of Canon 7, respondents ceased their association with the Bolton campaign, and respondent Tailer attempted to have her name removed from the invitation.

Respondents were charged with violating Canon 7(B)(2)(b) by having publicly endorsed another candidate for public office. The Board hearing panel recommended issuance of a cease and desist order, but did not recommend imposition of other sanctions since the respondents had desisted from the conduct in question. Neither complainant nor respondents contested the Board’s recommendation, and the commission adopted the hearing panel’s report.

- *In re Judicial Campaign Complaint against Roberts* (1996), 82 Ohio Misc.2d 59.

Respondent was county court judge running for the court of appeals. He distributed a circular badge that consisted of the phrase “For Court of Appeals/Judge Roberts,” with no indication that respondent currently served on the county court. The phrase “For Court of Appeals” appeared above the phrase “Judge Roberts,” and the two phrases were separated by a horizontal line and three stars. Respondent also disseminated campaign literature that stated “* * * the legal community says only County Court Judge Bob Roberts is qualified * * *.” The record showed that respondent was endorsed by only one county bar association within the seven-county

appellate district. Respondent also was charged with distributing campaign literature that stated his opponent had “never even had a private law practice.” Respondent was charged with violating Canons 7(B)(2)(f) and (D)(1) with regard to the badge and Canon 7(D)(8) with regard to the use of the phrase “legal community.” The third count of the complaint regarding the respondent’s alleged misstatement of his opponent’s qualifications was dismissed at the hearing before the Board panel.

The hearing panel found a violation on the first count, holding that the badge would lead the average person to believe that respondent was a judge on the court of appeals, especially since respondent did not include the court on which he served. As to count two, the hearing panel found that use of the term “legal community” without providing a clear explanation of what constitutes the “legal community” was misleading and false. The hearing panel recommended that respondent be fined \$250.

The commission concluded that the record did not support a finding by clear and convincing evidence that the badge was misleading. The commission stated that “while the lapel sticker is potentially misleading, we cannot say that the respondent acted knowingly or recklessly in circulating the lapel sticker.” Judge Lazarus dissented from this conclusion, stating that she would have found a knowing violation of Canon 7(D)(1) based on respondent’s admitted understanding of the interpretation given this provision by the commission in *Emrich, supra*.

The commission upheld the hearing panel’s finding regarding use of the term “legal community” and imposed a fine of \$250 plus costs of the proceeding.

- *In re Complaint against Judge Harper* (1996), 77 Ohio St.3d 211.

During her campaign for the Supreme Court, respondent approved the broadcasting of a television commercial that implied her opponent, a sitting Supreme Court justice, had made rulings favoring campaign contributors. The Board of Commissioners and a panel of appellate judges, sitting in place of the Supreme Court, concluded that the respondent, in approving the campaign advertisement, failed to maintain the dignity appropriate to her judicial office and undermined public confidence in the integrity and impartiality of the judiciary, in violation of Canons 2(A) and 7(B)(1)(a). Respondent received a public reprimand for the violations.

- *In re Judicial Campaign Complaint against Hildebrandt* (1997), 82 Ohio Misc.2d 1.

Respondent was a court of appeals judge running for reelection. In television and radio advertisements, respondent included statements that “according to the district attorneys, [respondent’s opponent] voted to end the death penalty” and “[respondent’s opponent] ran for judge then dropped out, then ran for Congress and lost.” The former statement was based on a 1994 letter to the President and Attorney General from the National District Attorneys Association terming a vote for certain legislation was a “subrosa attempt to end imposition of the death penalty.”

Respondent was charged with violating Canons 7(B)(1), (B)(2)(f), and (E)(1). With respect to the death penalty statement, the hearing panel found that the advertisement was false and misleading in that the complainant never voted to end the death penalty and failed to inform the public of the facts underlying the statement. As to the latter statement, respondent failed to inform the public that complainant actually had won election to Congress before losing a subsequent race for reelection. The panel noted that complainant had informed respondent of the inaccurate nature of the advertisements and that respondent continued to run the advertisements. The panel recommended a cease and desist order and a fine of \$750.

The commission concurred in and adopted the hearing panel's statements regarding the severity of the respondent's misconduct. In addition, the commission noted that the advertisements in question were timed to appear just prior to the election so as to provide the complainant little time to respond to the misstatements or seek redress prior to the election through the expedited grievance process. The commission also expressed distress with the respondent's failure to verify personally the content of his advertisements, especially after he was informed by the complainant of the incorrect statements.

The commission concluded that the \$750 sanction recommended by the hearing panel was inadequate given the gravity of the respondent's violations and the need to deter similar misconduct by judicial candidates in the future. The commission suspended the respondent from judicial office, without pay, for a period of six months, beginning on February 9, 1997. The term of the suspension was stayed, and the respondent was placed on probation, subject to the following terms: issuance of a public apology to the complainant and the citizens of Hamilton County; payment of a \$15,000 fine and costs of the proceedings; and payment of the complainant's reasonable and necessary attorney fees and expenses totaling \$7,963.50. Payment of attorney fees was found appropriate given the public interest served by the complainant's prosecution of the grievance.

Judge Hildebrandt appealed the commission's sanction to the Supreme Court, but dismissed his appeal on May 21, 1997. On June 3, 1997, the commission issued a revised order relative to its sanctions that made the sanctions effective June 17, 1997. In addition, the commission rejected the respondent's proposed apology that had been submitted in February and issued a revised statement of apology. The respondent was required to issue this revised statement.

- *In re Judicial Campaign Complaint against Morris* (1997), 81 Ohio Misc.2d 64.

Respondent was a candidate for the domestic relations division of the court of common pleas. The complainant's spouse was a county court judge and the respondent's opponent. In a domestic relations hearing in which respondent and the complainant's spouse were opposing counsel, the complainant's spouse referred to the son of the parties as a "loser." The son was nineteen at the time of the hearing and was not present at the hearing.

Respondent ran a television advertisement that pictured a twelve year-old boy sitting in a courtroom. The advertisement contained a reference to respondent's opponent as referring to a "child" as a "loser." The advertisement suggested that because of this remark, the respondent's opponent was not suited to become a domestic relations judge. The panel report found that respondent violated Canon 7(E)(1) by portraying the opponent's remark out of context both visually and audibly and with the intent of leading the public to believe that the remark was made regarding a young boy and in the opponent's judicial capacity. The panel recommended a fine of \$500.

The commission affirmed the findings of fact and conclusions of law issued by the hearing panel. However, in view of the dual purpose served by the judicial election rules of punishing misconduct and "informing the legal and judicial communities of appropriate campaign conduct," the commission rejected the sanction recommended by the panel. The commission found that to sanction the conduct at issue by means of a \$500 fine was:

"* * * to create a campaign environment in which judicial candidates may determine to engage in known violations of the judicial code, including in their campaign budgets a calculation of fines to be paid as a 'cost of doing business.' Such an environment would in no way enhance the public respect for the judiciary or increase the ability of the citizenry to make more informed choices among candidates for judicial office."

The commission publicly reprimanded the respondent and ordered her to pay the costs of the proceeding.

- *In re Judicial Campaign Complaint against Burick* (1999), 95 Ohio Misc.2d 1.

Respondent made several statements that were found to be contrary to Canon 7:

- The respondent's statement that her opponent was appointed by the county political party, when in fact the opponent was appointed by the Governor pursuant to the Ohio Constitution, was considered false and misleading in violation of Canon 7(B)(2)(f) and (E)(1). The judicial commission noted that while comments regarding a judge's appointment by the Governor were permissible, those statements must be accurate and enhance the public's understanding of the appointment process.
- The respondent's statements regarding her use of the death penalty if elected implied that she would impose the death penalty without regard of the facts of the case and application of statutory standards used to determine the appropriateness of the death penalty. These statements were found to be contrary to Canon 7(B)(2)(c) and (d).
- The respondent's statements regarding the leniency of the incumbent judge's sentencing in a rape case were false and misleading in that the defendant plead guilty to a single count of sexual battery for which the maximum allowable sentence was imposed.

Moreover, under definitions contained in prior Supreme Court cases, the statement was considered to have been made regarding a pending case, even though the judge had sentenced the defendant and the case had not yet been appealed to the court of appeals. These statements were found to have violated Canon 7(B)(2)(e) and (f), (E)(1), and (F).

- The respondent's advertisement stating that she was "proud to have received the Union endorsements" and that she had been "endorsed by the Fraternal Order of Police" would lead reasonable persons to conclude that she had received all the labor and FOP endorsements, when this was not the case. These statements were in violation of Canon 7(D)(10) and (E)(1). The candidate should have noted the specific unions and FOP lodges that issued the endorsements.

Upon reviewing the hearing panel's recommendation of a public reprimand and \$5,000 fine, the judicial commission noted evidence of six separate violations of ten provisions of Canon 7 and evidence that the respondent failed to take timely and effective steps to remove the offending advertisements once the hearing concluded. Thus, the commission increased the fine to \$7,500, publicly reprimanded the candidate, and ordered the payment of court costs and the attorney fees of the complainant.

- *In re Judicial Campaign Complaint against Hein* (1999), 95 Ohio Misc.2d 31.

The respondent was the elected prosecuting attorney running for election against the complainant, who was the sitting common pleas judge. In a press release, the respondent criticized the sentence imposed by the complainant in a case the respondent had appealed. In campaign communications and at a public candidate's forum, the respondent referred to the complainant as a "liberal" and "soft on criminals."

Upon review of the hearing panel's report finding violations of Canon 7(B)(2)(e) and (f), the judicial commission noted the comments regarding the complainant's sentencing were related to a substantive matter in a case pending on appeal before the court of appeals. The commission rejected the respondent's argument that the comments were made by him, not as a judicial candidate, but in his capacity as the elected prosecuting attorney, noting that as a "judicial candidate" defined in Canon 7(A)(1), the respondent was obliged to comply with the requirements of Canon 7. With regard to the respondent's characterization of the complainant as a "liberal" and "soft on criminals," the commission found evidence to support violations of Canon 7(B)(2)(f) and (E)(1).

[T]he use of general, inflammatory terms or "buzzwords," such as those employed by the respondent in his printed and oral campaign communications, are inappropriate in judicial campaigns. Moreover, the terms do not allow for a fair and accurate portrayal of the record of the respondent's opponent. As such, they "would be deceiving or misleading to a reasonable person." Canon 7(E)(1).

Citing concern with the respondent's lack of familiarity with Canon 7 and "somewhat cavalier attitude toward obtaining a greater understanding," the commission imposed the sanction of a public reprimand in addition to the \$2,500 fine and attorney fees and costs recommended by the hearing panel.

- *In re Judicial Campaign Complaint against Runyan* (Feb. 25, 1999), 95 Ohio Misc.2d 62.

During an interview with the editorial board of a local newspaper, the respondent was alleged to have made the statement that, "If elected, I will imprison all convicted felons," in violation of Canon 7(B)(2)(c). Upon review, a majority of the judicial commission concluded that the record made before the hearing panel did not support the finding of a violation of Canon 7(B)(2)(c) by clear and convincing evidence. The record contained conflicting evidence as to whether the comment attributed to the respondent was a direct quote by the respondent or an interpretation by the newspaper and whether the comment was an absolute pledge or promise or expression of a philosophical view. There also was some question as to whether the respondent had used the term "prison" or "incarceration." Accordingly, a majority of the commission rejected the hearing panel's recommendation and dismissed the complaint.

Two members of the judicial commission found that a statement to the effect that "convicted felons are going to be incarcerated" constituted a pledge or promise in violation of Canon 7(B)(2)(c).

- *In re Judicial Campaign Complaint against Kienzle* (1999), 96 Ohio Misc.2d 31.

In campaign materials, the respondent stated that his opponent, the incumbent judge, imposed \$430,000 in taxes on residents of Wayne County by issuing a ruling that later was reversed on appeal. The respondent went on to state that he would never impose taxes on Wayne County residents contrary to law. The Board hearing panel found these statements were contrary to Canon 7(E)(1) and recommended a fine of \$2,500 plus attorney fees and costs.

The judicial commission concurred with the panel's finding of a violation, concluding that the respondent knew or should have known that members of the judicial branch are without power to impose taxes. The commission referenced the respondent's undergraduate degree in political science and his experience as a high school government teacher, twenty-four years as a licensed attorney, and seven years as a magistrate. The commission rejected the respondent's defense that his statements and the wording of the appellate opinion that reversed the complainant's ruling were "functionally equivalent" and noted that the respondent's statements not only were inaccurate but promoted misunderstanding of the role of the judiciary.

The commission reduced the recommended fine to \$1,000 but publicly reprimanded the respondent for his misconduct. The public reprimand was viewed as a more appropriate sanction given the fact that the respondent's statements were harmful to the judiciary as an institution and in view of his experience as an educator, lawyer, and judicial officer. The commission also cited

prior holdings in *Morris* and *Hein* relative to the inadequacy of imposing only monetary sanctions for violations of Canon 7. The respondent also was ordered to pay attorney fees of \$4,600 and costs.

- *In re Judicial Campaign Complaint against Brigner* (2000), 89 Ohio St.3d 1460.

In late January, respondent's campaign committee distributed a fundraising letter that included statements asserting that his opponent "*** has never handled a divorce case" and was "*** a novice who lacks even one day of domestic relations experience." An enclosure distributed with the letter contained a chart contrasting the experience of respondent and complainant and claiming that complainant had no experience in various types of domestic relations cases. The Board hearing panel concluded that these statements did not violate Canon 7(B)(2)(f), but were in violation of Canon 7(E)(1), and recommended a sanction of a public reprimand, attorney fees, and costs. The hearing panel also recommended that respondent be required to return any campaign contributions received by his campaign committee from persons who received the materials upon which the complaint was based.

The five-judge commission concurred in the finding of a violation, but modified the sanction recommended by the hearing panel. The commission concluded that, "[i]n comparing respondent's violation with those committed by other judicial candidates, *** the recommended sanction of a public reprimand [is] excessive and inappropriate." Specifically, the commission noted that prior cases in which a public reprimand was imposed involved multiple Canon 7 violations [*Burick*], wide distribution of false and misleading statements [*Morris* and *Kienzle*], and improper communications that occurred shortly before the election [*Hildebrandt*]. By contrast, the mailing distributed by respondent's campaign committee constituted a single instance of misconduct and was distributed to a limited number of individuals well in advance of the election.

In place of the public reprimand, respondent was fined \$1,000. The commission further rejected the suggestion that respondent be required to return campaign contributions received as a result of the mailing, finding that such a sanction was not specifically authorized by the rules and would be difficult to monitor. However, the commission did order the respondent to provide complainant with the names and addresses of all persons known to have received the fundraising letter so that she could accurately communicate her qualifications to those persons. The commission also ordered the payment of attorney fees totaling \$4,115 and costs.

- *Disciplinary Counsel v. Evans* (2000), 89 Ohio St.3d 497

Judicial candidate for an appellate court serving a fourteen-county district accepted an offer from two members of his campaign committee to construct campaign signs at no charge to the campaign. The construction work was performed in a township garage, and later at a private warehouse, using township equipment, and the free labor was performed by jail inmates on work release, welfare recipients assigned to work for the township, and a fulltime township employee.

Upon discovering the manner in which the work was being performed, the candidate ordered that the work be stopped. However, he did not report the value of the facilities, material, or labor as a contribution on his campaign finance reports. Affiant also used advertisements in which he claimed to be, “Endorsed by Southern Ohio’s Top Prosecutors and Sheriffs!” At the time the advertisements were distributed, the candidate had been endorsed by only five sheriffs and three prosecutors in the fourteen-county appellate district.

A judicial campaign grievance initially was filed against the candidate by two of his primary election opponents in June 1998. The following month, the grievants asked that the grievance be transferred to the Disciplinary Counsel for investigation and possible prosecution through the regular grievance process. While the matter was pending before the Board of Commissioners on Grievances and Discipline, the candidate, who had been elected to the court of appeals in November 1998, filed a defamation action against the grievants.

The Board hearing panel found the candidate’s conduct in violation of Canons 7(B)(1), (C)(9), and (E)(1). Cited as aggravating factors were the candidate’s admission of campaign misconduct while proceeding with a civil law suit against the grievants, his lack of candor and sincerity, and his failure to rectify misconduct of which he was aware until after a grievance had been filed against him. The hearing panel recommended a stayed, six-month suspension from the practice of law. The Board agreed with the panel’s finding of a violation, but recommended that the suspension be imposed without a stay based on the candidate’s lack of good faith mitigation efforts and his conduct subsequent to the filing of the grievance.

The Supreme Court affirmed the Board’s finding of violations, but split 4-3 on the sanction. The majority of the Court agreed with the stayed six-month suspension, in part, finding the sanction to be comparable to that imposed in other judicial elections cases (*Hildebrandt, Harper, Burick, and Roberts*).

- *In re Judicial Campaign Complaint against PerDue* (2002), 97 Ohio St.3d 1427.

Respondent failed to timely complete the judicial campaign course requirement imposed by Canon 7(B)(5) of the Code of Judicial Conduct, but later completed the course and provided proof of attendance. Respondent was fined \$100, with the fine suspended, and ordered to pay costs.

- *In re Judicial Campaign Complaint against PerDue* (2003), 98 Ohio St.3d 1548.

Respondent was charged with three violations of Canon 7: (1) identifying himself in post-primary campaign literature as a “conservative Republican” in violation of Canon 7(B)(3)(c); (2) distributing campaign literature that alleged an individual had murdered a police officer after respondent’s opponent had placed the individual on probation; and (3) accusing contributors to his opponent’s campaign of “trying to buy a judgeship” and alleging that his opponent’s judicial decisions were for sale.

The Board hearing panel found the respondent's conduct to be in violation of various provisions of Canon 7 and recommended a sanction of a public reprimand and imposition of costs. The five-judge commission concurred in the findings of the hearing panel but found the recommended sanction "fail to apply sufficient weight to the violations given their egregious nature." In addition to imposing a public reprimand and ordering the payment of costs, the commission ordered the respondent to pay the complainant's attorney fees and expenses of \$2,001.50.

- *Disciplinary Counsel v. Kaup*, 102 Ohio St.3d 29, 2004-Ohio-1525.

Respondent published and distributed various forms of campaign advertising that included a reference to the respondent having been endorsed by the "Neighborhood Protection Council." No such entity existed; rather the "Neighborhood Protection Council" was a shortened version of the name of the respondent's campaign committee. Both the hearing panel of the Board of Commissioners on Grievances and Discipline and the full Board concluded that by running the advertisements, the respondent violated Canon 7(D) [false statements as to endorsements] and Canon 7(E) [deceiving or misleading campaign information] and recommended the respondent be publicly reprimanded.

In reviewing the Board's report and recommendation, the Supreme Court concurred in the Board's finding of a violation of Canon 7(D) and (E). However, the Court increased the recommended sanction to a six-month stayed suspension in view of the serious nature of respondent's misconduct and respondent's insistence that he did nothing wrong. The Court also cited prior judicial campaign misconduct decisions, including *Harper*, *Burick*, *Roberts*, and *Hildebrandt*.

- *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704.

Respondent was charged with six counts of judicial misconduct, including a charge that she improperly used court resources and personnel to support her candidacy for the court of appeals. The record established that respondent personally solicited campaign contributions, through her staff attorney, from the staff attorney's future employer and her husband's law firm. The testimony indicated that, near the end of a fundraising event, respondent approached the staff attorney and demanded that both the staff attorney's future employer and her husband's law firm "needed to step up to the plate and contribute to her campaign." Testimony also supported an allegation that respondent indicated the husband's law firm "owed her" for a favorable verdict in a recently concluded case tried before respondent. The Supreme Court found that respondent's use of her staff attorney to solicit campaign contributions was in violation of then-Canon 7(C)(1) and the prohibition against the solicitation of campaign funds by a judge or judicial candidate. For these and other acts of judicial misconduct, respondent was suspended from the practice of law for two years, with the second year stayed upon conditions. Respondent also was required to provide a report from a mental health professional as part of her application for reinstatement.

- *Disciplinary Counsel v. Spicer*, 106 Ohio St.3d 247, 2005-Ohio-4788.

In the course of his judicial campaign, respondent was charged with violating three provisions of the Code of Judicial Conduct. Respondent did not contest the allegations of Count I, that a negative television advertisement sponsored by his campaign committee and directed against his opponent violated Canon 2 (requiring that a judge act, at all times, in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and Canon 7(E)(1) (providing that a judicial candidate shall not knowingly or with reckless disregard use campaign materials that contain information concerning the candidate or an opponent, either knowing the information to be false or with a reckless disregard of whether or not it is false or, if true, that would be deceiving or misleading to a reasonable person). The advertisement that was the subject of County I of the complaint falsely and inaccurately implied that respondent's opponent, who was a sitting judge, was illegally and unethically enriching her family, that she was under investigation for misconduct, and that she was seeking election to the probate division so that she could continue her efforts to illegally and unethically enrich her family. The Board cited *Harper, infra*, and *Hildebrandt and Burick, supra*, in support of its finding that respondent violated Canons 2 and 7. The Court concurred in this finding and publicly reprimanded respondent.

Count II of the formal complaint alleged that respondent failed to report, as an in-kind contribution, a \$97,466 expenditure on campaign advertising that was made by the Summit County Republican Party. Both the respondent's campaign commercials and the commercials aired by the party were produced by a company that was co-owned by the chairman and the treasurer of the county party. The party's treasurer also served as administrator of the respondent's court and assisted in organizing the respondent's reelection campaign. Because the party's treasurer was an active participant in both the respondent's campaign and the party's efforts on behalf of the respondent and because the content of the advertisements was virtually identical, Disciplinary Counsel contended that the party's expenditure was an in-kind contribution and should have been reported as such by the respondent's campaign committee. The alleged in-kind expenditure, in addition to other expenditures made by the party to the respondent's campaign committee, would have exceeded the applicable limit on campaign contributions by the party.

The Board of Commissioners on Grievances and Discipline concluded that the party's campaign advertising expenditures on behalf of the respondent were not made "with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of" the respondent, his agent, or his campaign committee. The Board recommended dismissal of Count II of the formal complaint. In reviewing the Board's recommendation and applicable law, the Supreme Court concluded that the record did not demonstrate the requisite degree of "active involvement or interaction" by respondent in the party's development and airing of its campaign advertisements. Nonetheless, the Court strongly disapproved and admonished judicial candidates to avoid the type of "intermingling of interests in election campaigns" that was present in this case.

- *In re Judicial Campaign Complaint Against O'Reilly*, 2006-Ohio-6212.

Respondent was a candidate for election to the court of appeals, and his opponent was a sitting common pleas court judge and a former assistant county prosecutor. Respondent ran a television advertisement in which he alleged that his opponent committed errors or mistakes while serving as either a prosecutor or judge in three high profile criminal cases. The advertisement stated the respondent's opponent: (1) made an error as a trial judge that allowed Larry Flynt to go free and continue selling pornography in Hamilton County; (2) placed an alleged rape victim in jail; and (3) prosecuted the only death penalty case in which the death sentence was commuted by Governor Taft. A grievance was filed, and respondent subsequently was charged with a violation of Canon 7(E)(1) for broadcasting an advertisement that contained false, misleading, or deceiving information regarding his opponent.

Respondent moved to dismiss the complaint on the grounds that the Ohio Elections Commission failed to find probable cause that the advertisement violated the Ohio election law and that such determination barred the prosecution of an alleged violation of Canon 7(E)(1). The hearing panel denied the motion, finding that although both R.C. 3517.21(B) and Canon 7(E)(1) prohibit the dissemination of false information, the Canon further prohibits the dissemination of information that, if true, would be deceiving or misleading to a reasonable person.

The hearing panel took evidence regarding the content of the advertisement and court records related to the three cases referenced in the advertisement. Respondent contended that the statements in the advertisement were true and based on his reasonable research in the form of reviewing newspaper accounts of the three cases in question. The hearing panel concluded that even if individual portions of the campaign advertisement were not false, the entirety of the message, including the tone, production, and visual aids of the advertisement, were clearly designed to mislead a reasonable person about the opponents conduct in the three referenced cases. Specifically referencing the three portions of the advertisement, the hearing panel found the respondent's opponent (1) committed no error in signing a judgment entry that dismissed obscenity charges against Larry Flynt; (2) committed no error or mistake in issuing a "body attachment," as authorized by the Revised Code, to ensure the appearance of the complaining witness at the rape trial; and (3) did not commit any error or mistake that resulted in the commutation of a death sentence. The hearing panel went on to state that respondent was not justified in basing his campaign advertisement on newspaper accounts of the cases in question, while ignoring actual court records that contained accurate information about what transpired in each of the three cases. The hearing panel recommended issuance of a cease and desist order and imposition of a \$5,000 fine and costs against respondent.

The five-judge commission concurred in the hearing panel's factual determinations and found the advertisement in question to contain misleading and deceiving statements in violation of Canon 7(E)(1). Although respondent did not contest the hearing panel's report, he did ask the commission to consider reducing or eliminating the \$5,000 fine based on no previous disciplinary violations and three additional factors. The commission imposed a \$5,000 and costs and specifically discussed the mitigating factors cited by respondent. First, the commission found it to be of little consequence that respondent did not prevail in the election, stating that the

focus should instead be on the fact that respondent created and disseminated the campaign advertisement for the purpose of misleading or deceiving prospective voters. Second, the commission commended respondent's efforts to consult the applicable law before running the advertisement but indicated that this was an obligation incumbent on all judicial candidates as noted in *Hein, supra*. Third, the fact that respondent took immediate action to cease broadcasting the advertisement upon issuance of the hearing panel's report was not considered a mitigating factor but an appropriate response to a finding of an ethical violation. The commission stated that these factors did not lessen the seriousness of the misconduct but caused the commission to conclude that additional sanctions were unwarranted.

- *In re Judicial Campaign Complaint Against Lilly, 2008-Ohio-1846.*

Respondent was a candidate in the 2008 primary election, seeking nomination to run for election to the domestic relations division of the court of common pleas. She previously was elected to serve two full terms as domestic relations judge and was defeated for election to a third term in the 2006 election.

Respondent was charged with six separate violations of Canon 7 relative to the publication and circulation of allegedly false, misleading, or deceiving campaign materials. Following a hearing, a hearing panel found that respondent committed four separate violations of Canon 7 and recommended imposition of a \$100 fine for each count and the payment of costs of the proceeding, with the payment of such costs suspended.

The five-judge commission appointed by the Supreme Court reviewed each of the six counts of the complaint and found clear and convincing evidence with respect to three of the alleged violations:

- A violation of Canon 7(D)(3) for distributing a campaign communication that used the term "judge" prior to the candidate's name and failed to include the word "for" between the candidate's name and the term "judge." The commission conceded the violation could be termed "technical," but nonetheless found the wording of the advertisement in question to be contrary to the very specific requirements of Canon 7(D)(3).
- A violation of Canon 7(D)(1) for distributing a campaign communication that used the term "judge" prior to the candidate's name where that wording, in combination with other wording and pictures in advertisements, conveys the impression that the respondent was a sitting judge seeking to continue uninterrupted judicial service.
- A violation of Canons 7(B)(2)(f) and (D)(1) where the cumulative effect of respondent's campaign communications created the impression that the respondent was the incumbent judge running for reelection for continued service in the domestic relations division of the court of common pleas.

With respect to the third violation, the commission found that certain advertisements, standing alone, were not contrary to the advertising standards in Canon 7. Nonetheless, the

improper campaign communications together with other communications that (1) used photographs of respondent in a judicial robe, (2) quoted from past newspaper articles in a way to further the suggestion of incumbency, and (3) contained the term “reelect” in conjunction with respondent’s candidacy, represented a knowing effort by respondent to create the inference that she was the incumbent seeking to retain her judicial position.

The commission agreed with the hearing panel’s recommendations with regard to sanctions and imposed a \$300 fine and costs, with the payment of costs suspended on the condition of no future violations of the Code of Judicial Conduct.

- *In re Judicial Campaign Complaint Against Beery*, 2009-Ohio-113.

Respondent was a candidate for election to the court of common pleas, and his opponent was a former county prosecuting attorney who had been appointed by the Governor to fill a vacancy on the court of common pleas. During the campaign, respondent broadcast a radio advertisement that included a statement claiming that his opponent “got appointed by the political bosses in Columbus.” Respondent ran a separate radio advertisement and distributed a mail advertisement in which he was critical of his opponent’s involvement, while serving as a prosecutor, in plea bargaining a felony charge related to a defendant’s alleged rape of a minor child.

Following a hearing, a panel of the Board of Commissioners on Grievances and Discipline found two violations of Canon 7 of the Code of Judicial Conduct. The statement regarding the manner in which the complainant was appointed to the bench was found to be contrary to Canons 7(B)(2)(f) and (E)(1) as interpreted and applied in *Burick, supra*. The respondent’s advertisements regarding the complainant’s role in plea bargaining a sex offense were found to be in violation of the same provisions of Canon 7. Notably, the statements mischaracterized the complainant as having plea bargained a sex offense charge when, in fact, the complainant had no input to the plea agreement and was asked to step in for another prosecutor to represent the state in a sentencing hearing. Moreover, the complainant advised the respondent of the inaccuracies contained in the radio advertisement, yet the respondent later mailed an advertisement repeating the erroneous allegations. The hearing panel also found that the respondent intentionally timed the latter advertisement so that it was received just prior to Election Day.

The hearing panel recommended that the respondent be fined \$7,500, be required to pay the complainant’s reasonable and necessary attorney fees, and be assessed the costs of the proceedings. The panel further recommended a six-month suspension from the practice of law, with the suspension stayed on the conditions that the respondent pay the monetary sanctions and engage in no future ethical violations.

The five-judge commission appointed to review the report and recommendation of the Board hearing panel agreed with the panel’s findings and recommendations. With regard to the recommended sanctions, the panel noted the processes that exist for adjudicating judicial campaign complaints serve multiple purposes: (1) punish behavior that is contrary to the Code of

Judicial Conduct; (2) inform the legal and judicial communities of the appropriate standards governing judicial campaign conduct; and (3) deter similar violations by judicial candidates in future elections. See *Morris, Burick, and Brigner, supra*. The commission further noted that the processes serve the additional purposes of informing the public of the self-regulating nature of the legal profession and enhancing public confidence in the integrity of the proceedings. The commission found that the sanctions recommended by the hearing panel serve these purposes and again underscore the responsibility of all judicial candidates to conduct their campaigns with the same degree of honesty, dignity, and respect that, if elected, they would expect to receive from lawyers, litigants, and other members of the public.

The respondent was ordered to pay a fine of \$7,500.00 and costs totaling \$2,919.43. In addition, the commission accepted the parties' stipulation that the complainant incurred attorney fees of \$6,000.00 and ordered the respondent to pay those fees directly to the complainant. The respondent also was suspended from the practice of law for six months, with the suspension stayed on conditions of payment of the monetary sanctions and no future disciplinary violations.

- *In re Judicial Campaign Complaint Against Wagner*, 2011-Ohio-5478.

Complainant alleged that respondent violated Jud. Cond. Rule 4.3(D)(2) by displaying campaign advertisements wherein the word "for" was not prominent. The word "for" was smaller than and in the same color and print as other words on the respondent's campaign signs, t-shirts, and bumper magnets.

The three-member Board hearing panel found by clear and convincing evidence that the respondent violated Jud. Cond. Rule 4.3(D)(2) and recommended the issuance of a cease and desist order. However, the five-judge commission, by a vote of 3-2, reached a different conclusion and dismissed the complaint. The commission found that while the word "for" may not be prominent, there was no clear and convincing evidence that respondent violated Jud. Cond. Rule 4.3(D)(2) either knowingly or with reckless disregard. In addition to the lack of clear and convincing evidence, the commission cited "the imprecise definition of prominent" as the basis for its decision to dismiss the complaint. The commission further suggested that "future judicial candidates may possibly avoid a complaint or even a violation, by carefully considering how the words 'for' 'vote' or 'elect' are displayed in campaign material."

- *In re Judicial Campaign Complaint Against Davis*, 2011 Ohio-6800.

Respondent's print and electronic campaign materials indicated that he "graduated with honors from Miami University with degrees in Finance, Economics, French, and German" and "graduated with honors in degrees in Law, International Law, Finance, Economics, French, and German." Respondent also broadcast a television commercial claiming to have "earned six college degrees in seven years." Complainant alleged that the respondent possessed only an undergraduate degree in Business and a law degree. The undergraduate degrees claimed by the respondent were, in fact, major and minor fields of study, and the claimed degree in International Law was a graduate certificate in international trade and development.

The hearing panel found that the respondent's use of the term "degree" in his campaign materials, without further explanation that he received only two college degrees, was false. The panel further found that the reference to the graduate certificate as a "degree" was false. As such, the respondent's campaign advertisements violated Jud. Cond. Rule 4.3(A), (F), and (G). The panel recommended that the respondent be ordered to cease and desist from circulating campaign materials that referred to earning more than two degrees, referred to major or minor areas of study as separate college "degrees," and referred to the graduate certificate as a college "degree."

A five-judge commission appointed by the Supreme Court agreed with the hearing panel's determination that the respondent's advertisements violated three specific provisions of Jud. Cond. R. 4.3. However, the commission concluded that the respondent's actions warranted "additional sanctions to address the severity of his conduct and deter similar violations in the future by the respondent and other candidates." In particular, the commission was troubled by the respondent's defiance and arguments before the commission regarding the accuracy of his advertisements. The commission also noted that the respondent failed to comply fully with an interim cease and desist order issued by the commission by continuing to reference multiple degrees on his Facebook and campaign web pages.

Citing *In re Judicial Campaign Complaint Against Kienzle*, the commission observed that a public reprimand has been determined to be the appropriate sanction when a judicial candidate has presented facts about himself or an opponent that were false. Moreover, the respondent's clear and deliberate efforts to deceive the public and failure to comply with the terms of the interim cease and desist order merited a fine of \$5,000. The commission further ordered the assessment of costs against the respondent and payment of the complainant's attorney fees. The total monetary sanctions imposed by the commission exceeded \$15,700.

- *In re Judicial Campaign Complaint Against Lilly*, 2012- Ohio-1720.

Respondent was a former domestic relations judge running for a seat in the domestic relations division of a court of common pleas. Complainant alleged that the cumulative effect of Respondent's campaign materials created a false impression of incumbency. The materials included:

- A two-sided direct mailer with a photograph of Respondent in a judicial robe on one side and a photograph of her in a dark jacket and the phrase "Return Paulette Lilly" on the other side. The mailer included the dates Respondent was a judge on one side and the language "12 years' experience as a Domestic Relations Judge" on the other side. The mailer did not disclose that Respondent was not a judge.
- A billboard and a banner with a photograph of Respondent in the dark jacket and the words "Return Paulette Lilly for Judge." The billboard did not contain an explanation that Respondent was not a judge.
- Pages from Respondent's campaign website with photographs of Respondent in a judicial robe and dark jacket and occasional references to the dates of her former judicial service.
- A newspaper advertisement containing a photograph of Respondent in the dark jacket and the phrase "Return Paulette Lilly, Democrat for Domestic Relations Court." The

advertisement stated that Respondent had 12 years of experience as a judge, but did not indicate that Respondent was not currently a judge of the domestic relations court.

The hearing panel found that Respondent violated Jud. Cond. R. 4.3(A) (knowing or reckless use of false or misleading campaign literature); Jud. Cond. R. 4.3(C) (use of the title judge in a manner that implies the candidate currently holds the office); and Jud. Cond. R. 4.3(F) (misrepresentation of the candidate's identity, qualifications, or present position). Reviewing Respondent's campaign materials in total, the panel agreed with Complainant that the cumulative effect of the materials would be deceiving or misleading to a reasonable person. Because Respondent's campaign literature did not consistently identify her as a former judge, the panel concluded that the literature was confusing unless examined in detail. The panel recommended an interim and permanent cease and desist order. Also, as Respondent was sanctioned in 2008 for similar campaign conduct, the panel recommended a public reprimand, a \$3,000 fine, and an order to pay the costs of both the 2008 and 2012 campaign grievance cases. Costs in the 2008 case had been suspended, contingent on no future violations.

The five-judge commission appointed by the Supreme Court issued an interim order that Respondent "immediately and permanently cease and desist from using campaign materials and displaying billboards or other signage that uses words or phrases such as 'Return Paulette Lilly...' or that depict her in a judicial robe without a specific and prominent statement on the same page that she does not currently hold the position of judge of the court to which she seeks to be elected." The commission ultimately concluded that the charged violations of Jud. Cond. R. 4.3(A), (C), and (F) were supported by the record and agreed with the panel that a reasonable person would be confused or misled by Respondent's campaign materials. Regarding the sanction, the commission deviated slightly from the panel's recommendation. Finding that Respondent "violated similar canons on two separate occasions over the course of two campaigns," the commission determined that a public reprimand was warranted. The commission further imposed a fine of \$1,000 (not \$3,000 as suggested by the panel), and ordered that Respondent pay the costs of both the 2008 and 2012 campaign cases. The costs of both proceedings totaled \$3,633.

- *In re Judicial Campaign Complaint Against Michael*, 2012- Ohio-3187.

Respondent, who was a sitting municipal court judge running for the court of common pleas, was charged with three violations of the Code of Judicial Conduct: (1) a violation of Jud. Cond. R. 4.4(J)(1) by receiving a campaign loan of \$25,000 from her former husband; (2) a violation of Jud. Cond. R. 4.4(B) by permitting a public employee subject to her direction or control to solicit or receive campaign contributions; and (3) a violation of Jud. Cond. R. 4.3(C) by using the title "judge" in a manner that implied she was a common pleas court judge.

The hearing panel dismissed the alleged violation of Jud. Cond. R. 4.4(B) and found violations of Jud. Cond. R. 4.4(J)(1) and 4.3(C). With regard to the acceptance of a \$25,000 campaign loan from her former husband, the panel rejected Respondent's contention that her former spouse was a "domestic partner," as that term is used in Jud. Cond. R. 4.6(C), based on the existence of a shared parenting agreement, joint access to homes, and joint attendance at

family events. With regard to the alleged violation of Jud. Cond. R. 4.3(C), the panel found that the phrase “Vote Judge Kathryn Michael for Common Pleas Court” violated the rule because Respondent failed to reference her current position as a municipal court judge. The panel recommended issuance of a cease and desist order and payment of costs.

Upon review, the five-judge commission affirmed the findings of the hearing panel. The commission rejected Respondent’s contention that her ex-husband was a domestic partner, stating that such a contention “strains credibility.” The commission also rejected Respondent’s argument that she did not knowingly or with reckless disregard violate Jud. Cond. R. 4.3(C), finding that her experience as a four-time judicial candidate and attendance at mandatory judicial candidate seminars underscored the panel’s conclusion that Respondent acted recklessly.

The five-judge commission took a slightly different view of the Respondent’s misconduct in imposing a sanction. The commission characterized Respondent’s receipt of an excessive campaign loan “an egregious violation of the canon that calls for a monetary sanction,” notwithstanding respondent’s repayment of the loan. The commission further indicated that Respondent’s misuse of the title “judge” was “inexcusable given [her] history of multiple prior judicial candidacies and attendances at such seminars.” The commission imposed a fine of \$2,500, ordered the payment of \$2,500 of complaint’s attorney fees, and ordered the payment of the costs of the proceedings.

- *In re Judicial Campaign Complaint Against O’Neill*, 132 Ohio St.3d 1472, 2012- Ohio-3223.

Respondent, who was a former judge, was charged with a violation of Jud. Cond. R. 4.3(C) as a result of his circulation of campaign literature that referred to him by the title “judge.” At the hearing and before the five-judge commission, Respondent contended that he was permitted to use the title “judge” based on his assignment by the Chief Justice to perform a marriage ceremony and other documents in which he was referred to as a judge. The hearing panel concluded that a retired judge is not permitted by Jud. Cond. R. 4.3(C) to use the title “judge” if he or she does not currently hold judicial office. The panel further recommended the sanction of both an interim and permanent cease and desist order. The commission of five appellate judges appointed by the Chief Justice of the Courts of Appeals concluded that the panel’s finding was supported by the record and issued a cease and desist order.

By a vote of 7-6, an adjudicatory panel of 13 appellate judges found that Jud. Cond. R. 4.3(C), as applied to the Respondent, was unconstitutional and reversed the finding of the five-judge commission. The dissent would have affirmed the five-judge commission’s order based on Respondent’s failure to raise the constitutional issue before either the hearing panel or five-judge commission.

- *In re Judicial Campaign Complaint Against Michael*, 2012-Ohio-5054.

Respondent presided over a sentencing hearing that involved her acceptance of a plea agreement negotiated by the prosecution and defense. After the defendant expressed his appreciation to the judge for “helping” him out by accepting the reduction of the charged offense from a felony to a misdemeanor and suspending his jail sentence, the respondent proceeded to ask the defendant to “tell all your family how you feel about me because I’m running this year for the Common Pleas Court.” Based on these comments, respondent was charged with violations of Jud. Cond. R. 1.2 and 4.1(A)(6)

At the hearing, the respondent testified that her comments were light-hearted, sarcastic, and off-the-cuff. However, she admitted the statements were imprudent, inappropriate, and regretful. The panel found the respondent’s comments implied that she was accepting a guilty plea to a reduced charge and imposing a suspended sentence in exchange for support in her judicial campaign. The panel also found that the comments had and will have the effect of undermining public confidence in the judicial system. Citing respondent’s previous judicial campaign violation and decisions in *Lilly #2*, *Morris*, *Davis*, and *Burick*, the hearing panel recommended imposition of a public reprimand to deter the respondent from further misconduct, inform the public of standards governing judicial conduct, and deter similar violations in future judicial campaigns. The panel also recommend the payment of costs.

The five-judge commission agreed with the panel’s findings, noting that the respondent’s comments were clearly prejudicial to public confidence in the judiciary and could be construed as a statement affecting the outcome of a pending proceeding. In addition to the factors cited by the hearing panel in support of a public reprimand, the commission noted the temporal proximity of the respondent’s violations, both coming in the same election cycle. For this reason and the seriousness of the respondent’s violations, the commission also imposed a \$5,000 fine as well as costs of \$1,308.

- *In re Judicial Campaign Complaint Against Moll*, 2012-Ohio-5674

Respondent circulated a campaign flyer that included a photograph of herself wearing a judicial robe and a bullet-point notation identifying herself as “Magistrate, Guernsey County.” Although the respondent’s service as a magistrate ended in 2009, neither the photograph nor the bullet-point notation included any years of service. The hearing panel found the respondent misrepresented the respondent’s present position and title by approving and disseminating the flyer, in violation of Jud. Cond. R. 4.3(A), (C), and (F), and both the five-judge commission and Supreme Court concurred in this finding. The Court’s opinion referenced Board Advisory Opinion 2003-8 and *Lilly I* and *Lilly II*.

The hearing panel recommended issuance of both interim and permanent cease and desist orders and imposition of a \$1,000 fine and costs of the proceeding, with payment of the fine stayed on the condition of no further judicial campaign violations. Although both the five-judge commission and Supreme Court affirmed the panel’s findings, the five-judge commission

ordered the respondent to pay the \$1,000 fine, costs, and \$2,500 of the complainant's attorney fees. The Supreme Court affirmed the commission's order, finding no abuse of discretion.

- *In re Judicial Campaign Complaint Against O'Toole*, 2014-Ohio-4046.

Respondent was charged with violating Jud. Cond. R. 4.3(A) and (E) based on the use and circulation of campaign materials that conveyed the impression she was a sitting judge. On her campaign website, she was referred to as "Judge O'Toole" and there was no indication that her term on the bench had ended in 2010. In addition, there was wording in her on-line biography that reinforced the impression that she was a sitting judge. Respondent also appeared in public wearing a name badge that read "Colleen Mary O'Toole Judge 11th District Court of Appeals." Respondent had served as an appellate judge from 2005-2010, was defeated in her bid for reelection in the 2010 primary, and was running in 2012 to return to the appellate court. In addition, respondent testified at the hearing that she believed she had a right to refer to herself as a judge based on her prior service and denied that her campaign communications were misleading or deceiving.

The hearing panel found violations of Jud. Cond. R. 4.3(A) and (E) based on the content of the respondent's campaign website and her use of the name badge. The panel further concluded that these communications were part of an effort by the respondent to portray herself as an incumbent judge. The panel recommended issuance of a cease and desist order and imposition of a \$1,000 fine and recommended that respondent be ordered to pay attorney fees and costs.

Upon review, the five-judge commission concurred in the violations found by the hearing panel. In addition, the commission found respondent's conduct was distinguished from that in *Moll* and *Lilly* in that respondent did more than simply omit key facts from her campaign materials. Rather, the commission concluded that respondent's "conduct demonstrates that she is deliberately flouting the very rules that govern judges and candidates alike." Citing the respondent's testimony that she believed she was entitled to refer to herself as "judge" in direct contravention of the Code of Judicial Conduct, the commission ordered the imposition of a public reprimand in order to maintain the integrity of judicial elections. The commission further imposed a \$1,000 fine and ordered the payment of \$2,500 in attorney fees and costs of \$2,530.

Respondent appealed the commission's order to the Supreme Court, contending that Jud. Cond. R. 4.3(A) was unconstitutional and asserting the sanction imposed by the commission was the result of passion and prejudice and unsupported by the record.

The Supreme Court agreed, in part, with the respondent's constitutional arguments and struck that portion of Jud. Cond. R. 4.3(A) that prohibited communications that, if true, would be nonetheless misleading or deceiving to a reasonable person. Based on that holding, the Court dismissed the rule violation that was predicated on the content of the respondent's website. However, the Court found the balance of Jud. Cond. R. 4.3(A) to be constitutional and determined the respondent's conduct in wearing a name badge that identified her as a judge was

“a misrepresentation that she knew was patently false.” The Court further affirmed the issuance of a public reprimand and the imposition of fines, fees, and costs totaling \$6,030.