

# 2019 Judicial Candidate Seminar



JANUARY 30, 2019  
EMBASSY SUITES DUBLIN, COLUMBUS

FEBRUARY 14, 2019  
HOLIDAY INN, STRONGSVILLE

FEBRUARY 21, 2019  
HOLIDAY INN, FAIRBORN

JUNE 6, 2019  
MOYER JUDICIAL CENTER, COLUMBUS

AUGUST 8, 2019  
MOYER JUDICIAL CENTER, COLUMBUS

THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE

THE SUPREME COURT *of* OHIO  
JUDICIAL COLLEGE

2019-2020

NEW JUDGES ORIENTATION CHECKLIST

Pursuant to Gov.Jud.R. IV § 10, the following outlines the mandatory Judicial Orientation Program requirements.

- Part I**: New Judges Orientation, December 9-12, 2019
- Part II**: New Judges Orientation, May 4-7, 2020
- Part III**: Capital Cases Seminar, April 2-3, 2020 **OR**  
2021 date to be confirmed  
(Please see Gov.Jud.R. IV § 10(B)3 for judges who are required to participate)
- Part IV**: Judicial College Mentor Program (first year)  
Gov.Jud.R. IV § 10(B)4

Separate notices will be sent for each event closer to the dates.

*All courses are held in Columbus.*



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# Ohio Board of Professional Conduct

## NOTICE TO YEAR 2019 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 2019 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 and no later than sixty days after certification of candidacy by the county board of election or Secretary of State.

The Ohio Board of Professional Conduct has scheduled judicial candidate seminars for judicial candidates who will be on the ballot in 2019. The dates, times, and locations of these seminars are as follows:

**Wednesday, January 30, 2019<sup>1</sup>**

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

**Thursday, February 14, 2019**

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

**Thursday, February 21, 2019**

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

**Thursday, June 6, 2019<sup>2</sup>**

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

**Thursday, August 8, 2019<sup>3</sup>**

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.

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<sup>1</sup> The January 30, 2019 seminar is in conjunction with the Ohio Association of Municipal and County Court Judges meeting but, open to all 2019 candidates.

<sup>2</sup> Video Replay.

<sup>3</sup> Video Replay.

<b>CONTACT INFORMATION</b>
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**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, 5<sup>th</sup> Floor  
Columbus, OH 43215-3431  
614-387-9370

**Judicial Candidate Information on the Supreme Court of Ohio Website:**  
<https://www.bpc.ohio.gov/judicial-candidates>

**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](mailto: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](http://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 in 2011, Rick served for more than 22 years on the staff of the Supreme Court of Ohio, the last four 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, a distinguished life fellow of the Ohio State Bar Foundation, and past-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**  
(current through December 31, 2018)

**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.

87 *Statements and Comments Made during a Campaign for Judicial Office*  
88

89 [7] Divisions (A)(5) and (A)(6) prohibit judicial candidates from making comments  
90 that might impair the fairness of pending or impending judicial proceedings. This provision does  
91 not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate,  
92 or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a  
93 matter.  
94

95 *Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative*  
96 *Duties of Judicial Office.*  
97

98 [8] The role of a judge is different from that of a legislator or executive branch  
99 official, even when the judge is subject to public election. A judge must at all times strive for the  
100 respect and confidence of all persons who come before the judge and decide each case on the law  
101 and facts presented. Campaigns for judicial office must be conducted differently from  
102 campaigns for other offices so as to foster and enhance respect and confidence for the judiciary.  
103 Judicial candidates have a special obligation to ensure the judicial system is viewed as fair,  
104 impartial, and free from partisanship. To that end, judicial candidates are urged to conduct their  
105 campaigns in such a way that will allow them, if elected, to maintain an open mind and  
106 uncommitted spirit with respect to cases or controversies coming before them. The narrowly  
107 drafted restrictions upon political and campaign activities of judicial candidates provided in  
108 Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information  
109 to permit them to distinguish between candidates and make informed electoral choices.  
110

111 [9] Division (A)(7) makes applicable to both judges and judicial candidates the  
112 prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments  
113 that are inconsistent with the impartial performance of the adjudicative duties of judicial office.  
114

115 [10] The making of a pledge, promise, or commitment is not dependent upon, or  
116 limited to, the use of any specific words or phrases; instead, the totality of the statement must be  
117 examined to determine if a reasonable person would believe that the candidate for judicial office  
118 has specifically undertaken to reach a particular result. Pledges, promises, or commitments must  
119 be contrasted with statements or announcements of personal views on legal, political, or other  
120 issues, which are not prohibited. When making such statements or announcements, a judge  
121 should acknowledge the overarching judicial obligation to apply and uphold the law without  
122 regard to his or her personal views.  
123

124 [11] A judicial candidate may make campaign promises related to judicial  
125 organization, administration, and court management, such as a promise to dispose of a backlog  
126 of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A  
127 candidate may also pledge to take action outside the courtroom, such as working toward jury  
128 selection system, or advocating for more funds to improve the physical plant and amenities of the  
129 courthouse.  
130

131 [12] Judicial candidates may receive questionnaires or requests for interviews from the  
132 media and from issue advocacy or other community organizations that seek to learn their views

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

143  
144 *Permitted Conduct*

145  
146 [13] Subject to the other requirements in this canon, a judge or judicial candidate may  
147 attend and speak to a political gathering and may make contributions and expend campaign funds  
148 to attend a social or fundraising event on behalf of or sponsored by another office holder or  
149 candidate.

150  
151 **RULE 4.2 Political and Campaign Activities of Judicial Candidates**

152  
153 (A) *A judicial candidate* shall be responsible for all of the following:

154  
155 (1) Acting at all times in a manner consistent with the *independence, integrity,*  
156 *and impartiality* of the judiciary;

157  
158 (2) Reviewing and approving the content of all campaign statements and  
159 materials produced by the *judicial candidate* or his or her campaign committee  
160 before their dissemination;

161  
162 (3) The content of any statement communicated in any medium by his or her  
163 campaign committee and for compliance by his or her campaign committee with  
164 the limitations on campaign solicitations and *contributions* contained in Rule 4.4,  
165 if the candidate knew of the statement, solicitation, or *contribution*;

166  
167 (4) No earlier than one year prior to or no later than sixty days after  
168 certification of his or her candidacy by the election authority, completing a two-  
169 hour course in campaign practices, finance, and ethics accredited by the  
170 Commission on Continuing Legal Education and certifying such completion within  
171 five days of the date of the course to the Board of Professional Conduct.

172  
173 (B) *A judicial candidate* shall not do any of the following:

174  
175 (1) Jointly raise funds with a candidate for nonjudicial office, except as  
176 permitted by division (C) of this rule;

177

- 178 (2) Appear in a joint campaign advertisement with a candidate for nonjudicial  
179 office, except as permitted by division (C) of this rule;  
180
- 181 (3) Expend funds in a judicial campaign that have been contributed to the  
182 *judicial candidate* to promote his or her candidacy for a nonjudicial office.  
183
- 184 (C) A *judicial candidate* may do any of the following:  
185
- 186 (1) Conduct joint fundraising activities with other *judicial candidates*;  
187
- 188 (2) Appear in joint campaign advertisements with other *judicial candidates*;  
189
- 190 (3) Participate with *judicial* and nonjudicial *candidates* in fundraising activities  
191 organized or sponsored by a *political party*;  
192
- 193 (4) Appear with other candidates for public office on slate cards, sample  
194 ballots, and other publications of a *political party* that identify all of the candidates  
195 endorsed by the party in an election;  
196
- 197 (5) Seek, accept, or use endorsements from any person or *organization*;  
198
- 199 (6) State in person or in advertising that he or she is a member of, affiliated  
200 with, nominee of, or endorsed by a *political party*.  
201

### 202 **Comment**

203

204 [1] A judicial candidate remains subject to Rules 4.1, 4.3, and 4.4, in addition to the  
205 requirements of this rule. For example, a candidate continues to be prohibited from soliciting  
206 funds for a political party, knowingly making false statements during a campaign, or making  
207 certain promises, pledges, or commitments related to future adjudicative duties. See Rule  
208 4.1(A), 4.3, and 4.4(F).  
209

210 [2] In elections for judicial office, a candidate may be nominated by or otherwise  
211 publicly identified or associated with a political party. This relationship may be maintained  
212 through the period of the campaign, and a judicial candidate may include political party  
213 affiliation or similar designations in his or her campaign communications. Although these  
214 affiliations and others may be communicated to the electorate, a judicial candidate should  
215 consider the effect that partisanship has on the principles of judicial independence, integrity, and  
216 impartiality.  
217

## RULE 4.3 Campaign Standards and Communications

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

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

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

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

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

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

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

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

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

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

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

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

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



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

267  
268 (I) Make a false statement concerning the professional, occupational, or  
269 vocational licenses held by a *judicial candidate*, or concerning any position a *judicial*  
270 *candidate* held for which he or she received a salary or wages;

271  
272 (J) Make a false statement that a *judicial candidate* has been arrested,  
273 indicted, or convicted of a crime;

274  
275 (K) Make a statement that a *judicial candidate* has been arrested, indicted, or  
276 convicted of any crime without disclosing the outcome of all pending or concluded legal  
277 proceedings resulting from the arrest, indictment, or conviction;

278  
279 (L) Make a false statement that a *judicial candidate* has a record of treatment  
280 or confinement for mental disorder;

281  
282 (M) Make a false statement that a *judicial candidate* has been subjected to  
283 military discipline for criminal misconduct or dishonorably discharged from the armed  
284 services;

285  
286 (N) Falsely identify the source of a statement, issue statements under the  
287 name of another person without authorization, or falsely state the endorsement of or  
288 opposition to a *judicial candidate* by a person, *organization*, *political party*, or  
289 publication.

290

## 291 **Comment**

292

293 [1] A judicial candidate must be scrupulously fair and accurate in all statements made  
294 by the candidate and his or her campaign committee. This rule obligates the candidate and the  
295 committee to refrain from making statements that are false.

296

297 [2] The use of the title of a public office or position is reserved for those persons who  
298 contemporaneously hold the office by election or appointment. The use of the title by one not  
299 entitled by law to the office or position falsely states incumbency and thus is inherently  
300 misleading and deceptive. A judicial candidate who uses the title in contravention of the rule is  
301 acting in a manner inconsistent with the independence, integrity, and impartiality of the  
302 judiciary.

303

304 **RULE 4.4 Campaign Solicitations and Contributions**  
305

306 (A) A *judicial candidate* shall not personally solicit campaign *contributions*,  
307 except as expressly authorized in this division, and shall not personally receive  
308 campaign *contributions*. A *judicial candidate* may establish a campaign committee to  
309 manage and conduct a campaign for the candidate, subject to the provisions of this  
310 Code. The *judicial candidate* is responsible for ensuring that his or her campaign  
311 committee complies with applicable provisions of this Code and other applicable *law*. A  
312 *judicial candidate* may solicit campaign contributions in the following manner:  
313

314 (1) A *judicial candidate* may make a general request for campaign  
315 *contributions* when speaking to an audience of twenty or more individuals;  
316

317 (2) A *judicial candidate* may sign letters soliciting campaign *contributions* if  
318 the letters are for distribution by the *judicial candidate's* campaign committee and  
319 the letters direct *contributions* to be sent to the campaign committee and not to  
320 the *judicial candidate*;  
321

322 (3) A *judicial candidate* may make a general request for campaign  
323 *contributions* via an electronic communication that is in text format if *contributions*  
324 are directed to be sent to the campaign committee and not to the *judicial*  
325 *candidate*.  
326

327 (B) A *judicial candidate* shall prohibit public employees subject to his or her  
328 direction or control from soliciting or receiving campaign *contributions*.  
329

330 (C) The campaign committee of a *judicial candidate* shall not *knowingly* solicit  
331 or receive, directly or indirectly, for any political or personal purpose any of the  
332 following:  
333

334 (1) A *contribution* from any employee of the court or person who does  
335 business with the court in the form of a contractual or other arrangement in which  
336 the person, in the current year or any of the previous six calendar years, received  
337 as payment for goods or services *aggregate* funds or fees regardless of the  
338 source in excess of two hundred fifty dollars. The committee may receive  
339 campaign *contributions* from lawyers who are not employees of the court or  
340 doing business with the court in the form of a contractual or other arrangement.  
341

342 (2) A *contribution* from any appointee of the court unless the campaign  
343 committee, on its campaign *contribution* and expenditure statement, reports the  
344 name, address, occupation, and employer of the appointee, identifies the person  
345 as an appointee of the court, and indicates whether the appointee, in the current  
346 year or in any of the previous six calendar years, received *aggregate*  
347 compensation from court appointments in excess of two hundred fifty dollars.  
348

349 (3) A *contribution* from a *political party* unless the *contribution* is made from a  
350 separate fund established by the *political party* solely to receive donations for  
351 *judicial candidates* and the *political party* reports on the *contribution* and  
352 expenditure statements filed by the party the name, address, occupation, and  
353 employer of each person who contributed to the separate fund established by the  
354 *political party*.

355  
356 (D) As used in division (C) of this rule:

357  
358 (1) "Appointee" does not include a person whose appointment is approved,  
359 ratified, or made by the court based on an intention expressed in a document  
360 such as a will, trust, agreement, or contract.

361  
362 (2) "Court" means the court for which the *judicial candidate* is seeking election  
363 and, if applicable, the court on which he or she currently serves. If the *judicial*  
364 *candidate* is seeking election to a division of a court of common pleas or a  
365 municipal court, "court" means the division of the court for which the *judicial*  
366 *candidate* is seeking election and, if applicable, the court or division of the court  
367 on which he or she currently serves.

368  
369 (3) "Division" means any of the following whether separate or in combination:  
370 general division of the court of common pleas; domestic relations division of the  
371 court of common pleas; juvenile division of the court of common pleas; probate  
372 division of the court of common pleas; housing or environmental division of the  
373 municipal court.

374  
375 (4) "Compensation" does not include reasonable reimbursement for travel,  
376 meals, and other expenses received by an appointee who serves in a volunteer  
377 capacity.

378  
379 (E) The campaign committee of a *judicial candidate* may begin soliciting and  
380 receiving *contributions* no earlier than one hundred twenty days before the first Tuesday  
381 after the first Monday in May of the year in which the general election is held. If the  
382 general election is held in 2012 or any fourth year thereafter, the campaign committee  
383 of a *judicial candidate* may begin soliciting and receiving *contributions* no earlier than  
384 one hundred twenty days before the first Tuesday after the first Monday in March of the  
385 year in which the general election is held. Except as provided in divisions (F) and (G) of  
386 this rule, the solicitation and receipt of *contributions* may continue until one hundred  
387 twenty days after the general election.

388  
389 (F) If the candidate is defeated prior to the general election, the solicitation  
390 and receipt of *contributions* may continue until such time as the *contributions* solicited  
391 are sufficient to pay the campaign debts and obligations of the *judicial candidate*  
392 incurred on or before the date of the primary election, plus the costs of solicitation  
393 incurred after the date of the primary election, but in no event shall the solicitation or  
394 receipt of *contributions* continue beyond one hundred twenty days after the date of the

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

399  
400 (G) In the case of the death or withdrawal of a *judicial candidate*, the  
401 solicitation and receipt of *contributions* may continue until such time as the *contributions*  
402 solicited are sufficient to pay the campaign debts and obligations of the *judicial*  
403 *candidate* incurred on or before the date of death or withdrawal, plus the costs of  
404 solicitation incurred after the date of death or withdrawal, but in no event shall the  
405 solicitation or receipt of *contributions* continue beyond one hundred twenty days after  
406 the date of death or withdrawal.

407  
408 (H) Notwithstanding any provision of division (E) of this rule to the contrary, a  
409 *judicial candidate* may do either or both of the following:

410  
411 (1) Not more than ninety days prior to the commencement of the one hundred  
412 twenty-day fundraising period described in division (E) of this rule, contribute  
413 personal funds to his or her campaign committee;

414  
415 (2) After the conclusion of the applicable fundraising period described in  
416 division (E), (F), or (G) of this rule, contribute personal funds to his or her  
417 campaign committee for the express purpose of satisfying any campaign debt  
418 that was incurred during the applicable fundraising period and that remains  
419 unpaid at the conclusion of the applicable fundraising period. The name of the  
420 individual or entity to whom the debt is owed, the amount of the debt, and the  
421 date on which the debt was incurred shall be clearly noted on the appropriate  
422 campaign contribution and expenditure statement.

423  
424 (I) Except as otherwise provided in division (J) of this rule, the campaign  
425 committee of a *judicial candidate* shall not directly or indirectly solicit or receive in the  
426 fundraising period allowed by division (E), (F), or (G) of this rule a campaign *contribution*  
427 *aggregating* more than the following:

428  
429 (1) From an individual other than the *judicial candidate* or a member of his or  
430 her *immediate family*, three thousand eight hundred dollars in the case of a  
431 *judicial candidate* for chief justice or justice of the Supreme Court, one thousand  
432 three hundred dollars in the case of a *judicial candidate* for the court of appeals,  
433 or six hundred dollars in the case of a *judicial candidate* for the court of common  
434 pleas, municipal court, or county court.

435  
436 (2) From any *organization*, seven thousand dollars in the case of a *judicial*  
437 *candidate* for chief justice or justice of the Supreme Court or three thousand eight  
438 hundred dollars in the case of all other *judicial candidates*.

439  
440 (3) From a *political party*:

- 441  
442 (a) Three hundred forty-seven thousand six hundred dollars in the case  
443 of a *judicial candidate* for chief justice or justice of the Supreme Court;  
444  
445 (b) Seventy-five thousand nine hundred dollars in the case of a *judicial*  
446 *candidate* for the court of appeals;  
447  
448 (c) Seventy-five thousand nine hundred dollars in the case of a *judicial*  
449 *candidate* for a court of common pleas, municipal court, or county court  
450 that serves a territorial jurisdiction with a population of more than seven  
451 hundred fifty thousand;  
452  
453 (d) Sixty-three thousand one hundred dollars in the case of a *judicial*  
454 *candidate* for a court of common pleas, municipal court, or county court  
455 that serves a territorial jurisdiction with a population of seven hundred fifty  
456 thousand or less;  
457  
458 (J) If a *judicial candidate* is opposed in a primary election, the campaign  
459 committee of that *judicial candidate* shall not directly or indirectly solicit or receive either  
460 of the following:  
461  
462 (1) A campaign *contribution* from an individual or an *organization aggregating*  
463 more than the applicable limitation contained in division (I)(1) or (2) of this rule in  
464 a primary election period or in a general election period;  
465  
466 (2) A campaign *contribution* from a *political party aggregating* more than the  
467 applicable limitation contained in division (I)(3) of this rule in a general election  
468 period or aggregating more than the following during a primary election period:  
469  
470 (a) One hundred eighty-nine thousand five hundred dollars in the case  
471 of a *judicial candidate* for chief justice or justice of the Supreme Court;  
472  
473 (b) Thirty-seven thousand nine hundred dollars in the case of a *judicial*  
474 *candidate* for the court of appeals;  
475  
476 (c) Thirty-seven thousand nine hundred dollars in the case of a *judicial*  
477 *candidate* for a court of common pleas, municipal court, or county court  
478 that serves a territorial jurisdiction with a population of more than seven  
479 hundred fifty thousand;  
480  
481 (d) Thirty-one thousand six hundred dollars in the case of a *judicial*  
482 *candidate* for a court of common pleas, municipal court, or county court  
483 that serves a territorial jurisdiction with a population of seven hundred fifty  
484 thousand or less.  
485

486 (K) As used in division (J) of this rule, “primary election period” begins on the  
487 first day on which *contributions* may be solicited and received pursuant to division (E) of  
488 this rule and ends on the day of the primary election, and “general election period”  
489 begins on the day after the primary election and ends on the last day on which  
490 *contributions* may be solicited or received pursuant to division (E) of this rule.

491  
492 (L) For purposes of division (I), (J), and (K) of this rule:

493  
494 (1) *Contributions* received from *political action committees* that are  
495 established, financed, maintained, or controlled by the same corporation,  
496 nonprofit corporation, partnership, limited liability company, association,  
497 professional association, continuing association, estate, trust, business trust, or  
498 other entity, including any parent, subsidiary, local, division, or department of that  
499 same corporation, nonprofit corporation, partnership, limited liability company,  
500 association, professional association, continuing association, estate, trust,  
501 business trust, or other entity, shall be considered to have been received from a  
502 single *political action committee*.

503  
504 (2) All *contributions* received by a *judicial candidate* from a national, state, or  
505 county *political party* shall be combined in applying the limits set forth in division  
506 (J)(3) of this rule.

507  
508 (3) *In-kind contributions* consisting of goods and compensated services shall  
509 be assigned a fair market value by the campaign committee and shall be subject  
510 to the same limitations and reporting requirements as other *contributions*.

511  
512 (4) A *loan* made to a campaign committee by a person other than the *judicial*  
513 *candidate* or a member of his or her *immediate family* shall not exceed an  
514 amount equal to two times the applicable *contribution* limit, and amounts in  
515 excess of the applicable *contribution* limit shall be repaid within the fundraising  
516 period allowed by division (E) of this rule. A debt remaining at the end of the  
517 fundraising period shall be treated as a *contribution* and subject to the applicable  
518 *contribution* limit.

519  
520 (5) A debt incurred by a judge or *judicial candidate* in a previous campaign for  
521 public office and forgiven by the individual, *organization*, or *political party* to  
522 whom the debt is owed shall not be considered a campaign *contribution*.

523  
524 (M) In applying the *contribution* limits contained in division (I) and (J) of this  
525 rule, the *contributions* of an individual or *organization* to a *judicial candidate* fund  
526 established by a *political party* shall not be *aggregated* with other *contributions* from the  
527 same individual or *organization* made directly to the campaign committee of a *judicial*  
528 *candidate* unless the campaign committee of the *judicial candidate* directly or indirectly  
529 solicited the *contribution* to the *judicial candidate* fund.

530

531 (N) On or before the first day of December beginning in 2008 and every four  
 532 years thereafter, the director of the Board of Professional Conduct shall determine the  
 533 percentage change over the preceding forty-eight months in the Consumer Price Index  
 534 for All Urban Consumers, or its successive equivalent, as determined by the United  
 535 States Department of Labor, Bureau of Labor Statistics, or its successor in  
 536 responsibility, for all items, Series A. The director shall apply that percentage change to  
 537 the *contribution* limitations then in effect and notify the Supreme Court of the results of  
 538 that calculation. The Supreme Court may adopt revised *contribution* limitations based  
 539 on the director's calculation or other factors that the Court considers appropriate.

540  
 541  
 542 **CONTRIBUTION LIMITS**  
 543 **Effective January 1, 2017**  
 544  
 545

CANDIDATE FOR:	INDIVIDUAL		ORGANIZATION		POLITICAL PARTY	
	Primary*	General	Primary*	General	Primary*	General
<b>Supreme Court Chief Justice and Justice</b>	\$3,800	\$3,800	\$7,000	\$7,000	\$189,500	\$347,600
<b>Court of Appeals</b>	\$1,300	\$1,300	\$3,800	\$3,800	\$37,900	\$75,900
<b>Common Pleas, Municipal, and County Court more than 750,000</b>	\$600	\$600	\$3,800	\$3,800	\$37,900	\$75,900
<b>750,000 or less</b>	\$600	\$600	\$3,800	\$3,800	\$31,600	\$63,600

546  
 547 \*Primary limits apply only if the judicial candidate has a contested primary. If  
 548 there is no contested primary, the general election limits apply throughout the  
 549 permissible fundraising period.

550  
 551 **Comment**  
 552

553 [1] A judicial candidate is prohibited from personally soliciting campaign  
 554 contributions and personally receiving campaign contributions. These limitations protect four  
 555 vital interests: (1) avoiding the appearance of coercion or *quid pro quo*, especially when a  
 556 judicial candidate engages in a one-on-one solicitation of a lawyer or party who appears before  
 557 the court; (2) preserving both the appearance and reality of an impartial, independent, and  
 558 noncorrupt judiciary; (3) ensuring the public's right to due process and fairness; and (4)  
 559 furthering the public trust and confidence in the impartiality of the judicial decision-maker. Rule  
 560 4.4(A) recognizes that some forms of solicitation are less coercive and less intrusive than others  
 561 and permits a candidate to engage in solicitations that are less personal and directed at a wider  
 562 audience. A judicial candidate who directly solicits campaign contributions in a manner  
 563 authorized by Rule 4.4(A)(1)-(3) is subject to the limitations relating to the solicitation and

564 receipt of campaign contributions contained in Canon 4. Public employees subject to the  
565 direction or control of a judicial candidate are prohibited from soliciting or receiving campaign  
566 contributions.

567  
568 [2] A judicial candidate may establish a judicial campaign committee to solicit and  
569 accept campaign contributions, manage the expenditure of campaign funds, and generally  
570 conduct the campaign. In so doing, the campaign committee shall follow the provisions of the  
571 rule regarding the solicitation and receipt of contributions. A campaign committee shall follow  
572 all time guidelines controlling when judicial fundraising shall begin and end in reference to a  
573 particular judicial election.

574  
575 [3] The campaign committee may accept contributions that do not exceed the  
576 limitations established for individuals, organizations, and political parties. The judicial candidate  
577 is responsible under Rule 4.2(A)(3) for compliance by his or her campaign committee with the  
578 limitations established on campaign solicitations and contributions.

## 580 **RULE 4.5 Activities of a Judge Who Becomes a Candidate for** 581 **Nonjudicial Office**

582  
583 Upon becoming a candidate in a primary or general election for a nonjudicial  
584 elective office, a judge shall resign from judicial office. A judge may continue to hold  
585 judicial office while he or she is a candidate for election to or serving as a delegate in a  
586 state constitutional convention, if the judge is otherwise permitted by law to do so.

### 587 588 **Comment**

589  
590 [1] In campaigns for nonjudicial elective public office, candidates may make pledges,  
591 promises, or commitments related to positions they would take and ways they would act if  
592 elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is  
593 inconsistent with the role of a judge, who must remain fair and impartial to all who come before  
594 him or her. The potential for misuse of the judicial office, and the political promises that the  
595 judge would be compelled to make in the course of campaigning for nonjudicial elective office,  
596 together dictate that a judge who wishes to run for such an office must resign upon becoming a  
597 candidate.

598  
599 [2] The “resign to run” rule ensures that a judge cannot use the judicial office to  
600 promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event  
601 the judge is defeated in the election.

602



603 **RULE 4.6 Definitions**

604  
605 As used in Canon 4:

606  
607 (A) "Aggregate" means not only contributions in cash or in-kind made directly  
608 to a candidate's campaign committee, but also all contributions made indirectly with the  
609 understanding that they will be used to support the election of a candidate or to oppose  
610 the election of the candidate's opponent.

611  
612 (B) "Contribution" has the same meaning as in R.C. 3517.01 and includes an  
613 in-kind contribution.

614  
615 (C) "Immediate family" means a spouse or domestic partner or any of the  
616 following who are related by blood or marriage to the judicial candidate:

- 617  
618 (1) Parent;  
619  
620 (2) Child;  
621  
622 (3) Brother or sister;  
623  
624 (4) Grandparent;  
625  
626 (5) Grandchild;  
627  
628 (6) Uncle or aunt;  
629  
630 (7) Nephew or niece;  
631  
632 (8) Great-grandparent;  
633  
634 (9) First cousin.

635  
636 (D) "Domestic partner," "independence," "integrity," "impartiality," "impending,"  
637 and "pending" have the same meaning as in the Terminology section of this code.

638  
639 (E) "In-kind contribution" has the same meaning as in R.C. 3517.01.

640  
641 (F) "Judicial candidate" means a person who has made a public  
642 announcement of candidacy for judicial office, declared or filed as a candidate for  
643 judicial office with the election authority, or authorized the solicitation or receipt of  
644 contributions or support for judicial office, whichever occurred first.

645  
646 (G) "Knowingly" means actual knowledge of the fact in question. A person's  
647 knowledge may be inferred from circumstances.

648

649 (H) "Law firm" means a lawyer or lawyers in a law partnership, professional  
650 corporation, sole proprietorship, or other association authorized to practice law or  
651 lawyers engaged in a private or public legal aid or public defender organization, a legal  
652 services organization, the legal department of a corporation or other organization, or the  
653 attorney general, prosecuting attorney, law director, or other public office.  
654

655 (I) "Loan" means an advance of money with an absolute promise to pay, with  
656 or without interest, and includes loan guarantees.  
657

658 (J) "Organization" means any entity or combination of two or more persons,  
659 other than a political party, including, but not limited to, a corporation, nonprofit  
660 corporation, partnership, limited liability company, association, professional association,  
661 continuing association, estate, trust, business trust, political action committee as defined  
662 in R.C. 3517.01, law firm, organization affiliated with a political party, labor organization,  
663 campaign committee of another candidate for public office, or caucus campaign  
664 committee.  
665

666 (K) "Organization affiliated with a political party" means a combination of two  
667 or more persons, other than a political party or an organization, that is identified by its  
668 name or association with a national, state, or county political party or expressly  
669 promotes the interests, philosophy, or candidates of a political party.  
670

671 (L) "Political action committee" has the same meaning as in R.C. 3517.01.  
672

673 (M) "Political party" has the same meaning as in R.C. 3517.01 and includes  
674 any national, state, or county political party.  
675

676 (N) "Prominent lettering" means not less than the size of the largest type used  
677 to display the title of office or the court to which the judicial candidate seeks election.  
678

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

\* \* \*

**RULE II. Disciplinary Procedure.**

\* \* \*

683 **Section 5. Campaign Conduct; Enforcement and Sanctions.**  
684

685 Notwithstanding Section 2 of this rule, a grievance that alleges a violation by a  
686 judicial candidate of Canon 4 of the Code of Judicial Conduct during the course of a  
687 campaign for judicial office shall be brought, conducted, and disposed of in accordance  
688 with this rule and Gov. Bar R. V, as modified by this section. All other grievances shall  
689 be brought, conducted, and disposed of in accordance with this rule and Gov. Bar R. V.  
690

691 (A) *Filing of grievance; preliminary review; referral.*  
692

693 (1) A grievance that alleges a violation by a judicial candidate of Canon 4 of  
694 the Code of Judicial Conduct during the course of a campaign for judicial office shall be  
695 filed with the director of the Board of Professional Conduct. Within two days of  
696 receiving the grievance, the director shall conduct a preliminary review. If the director is  
697 unable to conduct the preliminary review because of a conflict of interest, the director  
698 immediately shall forward the grievance to the chair of the Board who shall conduct the  
699 preliminary review. If the chair has a conflict of interest or is unavailable, the director  
700 immediately shall forward the grievance to the vice-chair of the Board who shall conduct  
701 the preliminary review.  
702

703 (2) If a judicial candidate files a grievance alleging a violation by his or her  
704 opponent of Canon 4 of the Code of Judicial Conduct and the judicial candidate and his  
705 or her opponent have signed an agreement with a voluntarily organized judicial election  
706 monitoring committee that provides for expedited consideration of alleged violations of  
707 Canon 4 of the Code of Judicial Conduct, the director may refer the grievance to the  
708 monitoring committee for consideration. The director shall not refer the grievance to the  
709 monitoring committee if the judicial candidate has exhausted the remedies provided for  
710 under the agreement.  
711

712 (3) The director, chair, or vice-chair may refer a grievance to the Office of  
713 Disciplinary Counsel under any of the following circumstances:  
714

715 (a) The probable cause panel fails to find probable cause that a violation of  
716 canon 4 has occurred;  
717

718 (b) The director, chair, or vice-chair determines that it is unnecessary to  
719 handle the grievance on an expedited basis;

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

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

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

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

(2) The chair or director may designate former members of the board to serve on probable cause and hearing panels appointed pursuant to divisions (B) and (C)(1) of this section.

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

764 (D) *Appointment of five-judge commission; proceedings before the*  
765 *commission.*

766  
767 (1) Within five days of receiving the report, the Supreme Court shall appoint a  
768 commission of five judges as provided in section 2701.11 of the Revised Code and Gov.  
769 Jud. R. III. The commission shall expedite its consideration of the report and may make  
770 its determination from the report of the hearing panel, permit or require the filing of  
771 briefs, conduct oral argument, or order the hearing panel to take additional evidence. If  
772 the commission concludes the record supports the hearing panel's finding that a  
773 violation of Canon 4 has occurred and there has been no abuse of discretion by the  
774 hearing panel, the commission may enter an order that includes one or more of the  
775 following:

776 (a) A disciplinary sanction against the respondent;

777  
778 (b) An order enforceable by contempt of court that the respondent cease and  
779 desist from engaging in the conduct that was found to be in violation of Canon 4;

780  
781 (c) A fine imposed against the respondent;

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

783  
784 (e) An assessment against the respondent of the reasonable and necessary  
785 attorneys fees incurred by the complainant in prosecuting the grievance.

786  
787 (2) Upon recommendation of the hearing panel, motion of the complainant or *sua*  
788 *sponte*, the commission may enter an interim cease and desist order as it finds  
789 reasonable and necessary prior to making the determination required by division (D)(1)  
790 of this section. The interim order shall be based on the commission's preliminary  
791 review of the report and recommendation of the hearing panel and any record made  
792 before the commission.  
793  
794

795  
796 (3) A party may allege the existence of bias, prejudice, or other disqualifying  
797 factor on the part of a judge appointed by the Supreme Court to serve on a commission  
798 of five judges by filing a motion with the Chief Justice of the Supreme Court. The  
799 motion shall be filed within three days of the date the party receives notice of the  
800 appointment of the commission. If the Chief Justice finds the existence of bias,  
801 prejudice, or other disqualifying factor, the judge named in the motion shall be  
802 disqualified, and the Supreme Court shall appoint a substitute judge.

803  
804 (E) *Appeal of sanction.*

805  
806 The respondent may appeal a sanction issued by the commission to the  
807 Supreme Court. Notice of appeal shall be given by the respondent to the secretary of  
808 the commission and the Supreme Court within twenty days after the respondent's

809 receipt by certified mail of the commission's order. After receipt of the notice of appeal,  
810 the court may issue a briefing order and other appropriate orders.

811  
812 **Section 6. Campaign Conduct; Enforcement and Sanctions; Justices and**  
813 **Candidates for the Supreme Court.**

814  
815 A grievance that alleges a violation by a judicial candidate for the Supreme Court  
816 of Canon 4 of the Code of Judicial Conduct during the course of a campaign for judicial  
817 office shall be brought, conducted, and disposed of in accordance with this section.

818  
819 (A) *Initial review.*

820  
821 (1) The grievance shall be filed with the director of the Board of Professional  
822 Conduct. The director shall promptly forward the grievance and any supporting  
823 documentation to the Chief Judge of the Court of Appeals, elected pursuant to section  
824 2501.03 of the Revised Code. Within two days of receiving the grievance, the Chief  
825 Judge shall review the grievance to determine whether the grievance alleges a violation  
826 of Canon 4 by a judicial candidate for the Supreme Court and whether the grievance  
827 should be considered on an expedited basis. If the Chief Judge determines that no  
828 Canon 4 violation is alleged or that the grievance should not be considered on an  
829 expedited basis, the Chief Judge may dismiss the grievance and notify the grievant of  
830 such determination or proceed with a review of the grievance pursuant to Section 4 of  
831 this rule.

832  
833 (2) If the Chief Judge determines that the grievance alleges a violation of  
834 Canon 4 by a judicial candidate for the Supreme Court and that the grievance should be  
835 considered on an expedited basis, the Chief Judge shall immediately refer the  
836 grievance to a three-member review panel selected, by lot, from among the judges  
837 designated pursuant to Section 4(A)(3) of this rule. The review panel shall contact the  
838 judicial candidate named in the grievance for a written response, and determine from  
839 the grievance and the response whether probable cause exists that a violation of Canon  
840 4 occurred. The review panel may conduct a hearing to facilitate the determination of  
841 probable cause. The probable cause determination shall be made within five days after  
842 the grievance was received by the Chief Judge.

843  
844 (3) The review panel shall notify the Chief Judge of its probable cause  
845 determination and, if applicable, instructions regarding the preparation of a formal  
846 complaint. If the review panel finds no probable cause, the Chief Judge shall dismiss  
847 the grievance and notify the grievant. If the review panel finds probable cause, the  
848 Chief Judge shall instruct the director of the Board of Professional Conduct to prepare a  
849 formal complaint in accordance with the instructions of the probable cause panel and in  
850 the name of the grievant as relator. Upon preparation of the formal complaint, the  
851 director shall serve a copy of the formal complaint on the relator and respondent and  
852 transmit a copy to the Chief Judge.

853

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

855  
856 (1) Within three days of a determination that probable cause exists to support  
857 the preparation and prosecution of a formal complaint, the Chief Judge shall appoint a  
858 hearing panel of three fulltime trial court judges selected, by lot, from the list of judges  
859 developed and maintained pursuant to Section 4(C)(5) of this rule. The judges chosen  
860 shall be from separate appellate districts and shall not be from the district in which the  
861 respondent resides. The Chief Judge shall designate one of the judges to serve as the  
862 chair of the hearing panel.

863  
864 (2) Within five days of appointment and with notice to the parties, the hearing  
865 panel shall hold a hearing on the complaint. All hearings shall be recorded by a court  
866 reporter and a transcript included in the record of the proceedings.

867  
868 (3) Within five days of the conclusion of the hearing, the hearing panel shall  
869 prepare and issue a report of its findings and recommendations. If the panel finds, by  
870 clear and convincing evidence, that the respondent violated Canon 4 of the Code of  
871 Judicial Conduct and that a sanction for such violation is warranted, the hearing panel's  
872 report and the record of the proceedings shall be certified to the director, together with a  
873 recommendation as to whether the complaint should be considered on an expedited  
874 basis and whether the five-judge commission appointed pursuant to division (C) of this  
875 section should issue a cease and desist order pursuant to division (C)(2) of this section.  
876 If the hearing panel determines, by clear and convincing evidence, that a violation of  
877 Canon 4 has occurred, the hearing panel shall determine whether the respondent  
878 previously has been found to have violated Canon 4 and include the determination in its  
879 report. The director shall provide a copy of the hearing panel's report to the Chief Judge  
880 and send a copy of the hearing panel's report to the relator and respondent by certified  
881 mail.

882  
883 (C) *Appointment of five-judge commission; proceedings before the*  
884 *commission.*

885  
886 (1) Within five days of the issuance of the hearing panel's report, the Chief  
887 Judge shall appoint a commission of five appellate judges, chosen by lot from separate  
888 appellate districts. The Chief Judge shall designate one of the judges to serve as chair  
889 of the panel. No appellate judge who served on the panel that reviewed the allegations  
890 for probable cause shall be appointed to serve on the commission.

891  
892 (2) Unless otherwise recommended by the hearing panel, the commission  
893 shall expedite its consideration of the report and may make its determination from the  
894 report of the hearing panel, permit or require the filing of briefs, conduct oral argument,  
895 or order the hearing panel to take additional evidence. If the commission concludes the  
896 record supports the hearing panel's finding that a violation of Canon 4 has occurred and  
897 there has been no abuse of discretion by the hearing panel, the commission may enter  
898 an order that includes one or more of the sanctions set forth in Section 5(D)(1) of this  
899 rule. Upon recommendation of the hearing panel or *sua sponte*, the commission may

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

904  
905 (3) The commission's determination and any cease and desist order shall be  
906 sent to the director who shall provide a copy to the Chief Judge and serve a copy on the  
907 respondent and relator by certified mail. At the conclusion of all proceedings before the  
908 hearing panel, the director shall file the record of such proceedings with the Clerk of the  
909 Supreme Court as provided in division (F)(1) of this section.

910  
911 (D) *Appeal of sanction.*

912  
913 (1) The respondent may appeal a sanction issued by the commission. The  
914 notice of appeal shall be filed by the respondent with the Clerk of the Supreme Court  
915 within twenty days after the receipt by certified mail of the commission's order. The  
916 Clerk shall provide a copy of the notice of appeal to the Chief Judge and send a copy to  
917 the relator by certified mail.

918  
919 (2) Within five days of receipt of the notice of appeal, the Chief Judge shall  
920 convene an adjudicatory panel of thirteen appellate judges. The adjudicatory panel shall  
921 consist of the Chief Judge, who shall preside over the panel, and the presiding judge of  
922 each appellate district. No appellate judge who served on the panel that reviewed the  
923 allegations for probable cause or who served on the commission to review the report of  
924 the hearing panel shall be appointed to serve on the adjudicatory panel. If a presiding  
925 judge of an appellate district is unavailable to serve on the adjudicatory panel, the  
926 appellate judge of the district who is senior in service on the court of appeals shall  
927 replace the presiding judge.

928  
929 (3) The adjudicatory panel may establish a briefing schedule and make other  
930 appropriate orders. All orders of the adjudicatory panel shall be issued upon instructions  
931 from the panel by the Clerk who shall send the orders by certified mail.

932  
933 (E) *Failure to prosecute.*

934  
935 If, after probable cause has been found, the relator attempts to withdraw the  
936 grievance or otherwise fails to prosecute the formal complaint, the Chief Judge shall  
937 appoint a special disciplinary counsel who possesses the qualifications set forth in  
938 Section 4(B)(3) of this rule. Upon appointment, the special disciplinary counsel shall act  
939 as relator in the pending matter.

940  
941 (F) *Miscellaneous provisions.*

942  
943 (1) Upon the filing of a formal complaint, the director of the Board of  
944 Professional Conduct shall serve as clerk for the Chief Judge, the hearing panel, and  
945 the five-judge commission. The relator and respondent shall file all pleadings, motions,



946 documents, and other material with the director, who shall transmit the documents and  
947 materials to the Chief Judge and the appropriate panel. The Chief Judge, the panel,  
948 and the five- judge commission shall transmit all orders, opinions, and other materials to  
949 the director for service on or distribution to the parties. The director shall maintain a  
950 complete record of the proceedings and, upon conclusion of the proceedings before the  
951 hearing panel and five-judge commission, certify the record, including exhibits, to the  
952 Clerk of the Supreme Court who shall maintain the certified record. The Clerk shall  
953 serve as clerk for the adjudicatory panel, and all proceedings before the adjudicatory  
954 panel shall be conducted as provided in this section and the Rules of Practice of the  
955 Supreme Court of Ohio. Upon request, the director and Clerk shall assist the Chief  
956 Judge, hearing panel, five-judge commission, and adjudicatory panel with ministerial  
957 matters such as scheduling a location for hearings and securing a court reporter.

958  
959 (2) If a judge selected to serve on any panel appointed pursuant to Section 6  
960 of this rule is unable to serve because of the existence of a disqualifying factor, the  
961 judge shall notify the Chief Judge and provide written justification of the grounds for  
962 disqualification.

963  
964 (3) The Chief Judge and any judge appointed to serve in any capacity  
965 pursuant to Section 6 of this rule shall continue to serve in the appointed capacity until  
966 the conclusion of the matter as long as the judge continues to hold judicial office. If the  
967 Chief Judge leaves judicial office while a matter commenced under this rule during the  
968 Chief Judge's tenure remains pending, the successor Chief Judge shall assume  
969 responsibility for that matter. If a judge appointed to serve in any capacity under this rule  
970 leaves judicial office while a matter to which the judge was assigned under this rule  
971 remains pending, the Chief Judge shall designate a judge to replace the former judge in  
972 the same manner as the original appointment was made

973  
974 (4) A party may allege the existence of bias, prejudice, or other disqualifying  
975 factor on the part of a judge appointed to serve on a panel or commission pursuant to  
976 Section 6 of this rule by filing a motion with the Chief Judge. The motion shall be filed  
977 within three days of the date the party receives notice of the appointment of the panel or  
978 commission. If the Chief Judge finds the existence of bias, prejudice, or other  
979 disqualifying factor, the judge named in the motion shall be disqualified, and the Chief  
980 Judge shall designate a judge to replace the disqualified judge in the same manner as  
981 the original appointment was made.

## 982 983 **Section 7. Miscellaneous Provisions.**

984  
985 The following provisions apply to proceedings under Sections 5 and 6 of this rule.

986  
987 (A) Unless the justice, judge, or judicial candidate against whom a grievance  
988 has been filed agrees otherwise, the grievance shall remain private until the probable  
989 cause panel has made a determination of probable cause. After a determination of  
990 probable cause has been made, the grievance, formal complaint, report of the hearing

991 panel, order of the five-judge commission of five judges, record of the proceedings, and  
992 all hearings shall be public.

993  
994 (B) If any panel or commission of judges determines that the grievance was  
995 frivolous or filed solely for the purpose of obtaining an advantage for a judicial  
996 candidate, the panel or commission, in addition to any other order considered proper,  
997 may assess against the complainant the costs of the proceeding and any reasonable  
998 and necessary attorney fees incurred by the respondent in defending the grievance.  
999

1000 (C) In recommending, imposing, or reviewing a sanction for a violation of  
1001 canon 4, the panel or commission of judges shall consider any prior violations by the  
1002 respondent and may increase the severity of the sanction recommended or imposed for  
1003 the violation pending before the panel or commission.  
1004

1005 (D) Any sanction imposed by the five-judge commission or adjudicatory panel  
1006 shall be published by the Supreme Court Reporter in the manner prescribed in Rule V,  
1007 Section 17 of the Supreme Court Rules for the Government of the Bar of Ohio and  
1008 noted in the public records maintained by the Supreme Court Office of Attorney  
1009 Services.  
1010

1011 (E) The Board may adopt regulations to facilitate and implement the  
1012 expeditious consideration of grievances and complaints filed under Sections 5 and 6 of  
1013 this rule. A panel may extend the time requirements contained in Sections 5 and 6 of  
1014 this rule on its own motion, on agreement of the parties, or on motion of a party for good  
1015 cause shown. In considering an extension of the time requirements, the panel shall  
1016 consider all of the following:  
1017

1018 (1) The immediacy of the alleged violation;  
1019

1020 (2) The complexity of the complaint;  
1021

1022 (3) When the parties received notice of the hearing;  
1023

1024 (4) Whether a weekend or legal holiday intervenes to shorten the applicable  
1025 time period;  
1026

1027 (5) The parties' difficulty in obtaining documentation or witnesses, or both, to  
1028 prove or defend an allegation.  
1029

1030 (F) Any judge selected to serve on a commission appointed pursuant to  
1031 Section 5 of this rule or to a panel or commission appointed pursuant to Section 6 of this  
1032 rule shall be reimbursed from the Attorney Services Fund for travel expenses incurred in  
1033 association with the judge's service on the panel or commission. Reimbursement for  
1034 travel expenses shall be made as provided in the Supreme Court Guidelines for Travel  
1035 by Court Appointees. A judge appointed to a commission pursuant to Section 5 of this  
1036 rule shall request reimbursement by submitting a signed Travel Expense Report form

1037 and required receipts to the Administrative Director of the Supreme Court. A judge  
1038 appointed to a panel or commission pursuant to Section 6 of this rule shall request  
1039 reimbursement by submitting a signed Travel Expense Report form and required  
1040 receipts to the Chief Judge of the Court of Appeals. The Chief Judge shall indicate  
1041 approval of the reimbursement request and submit the approved form to the  
1042 Administrative Director of the Supreme Court.

1043

1044 **Section 8. Definitions.**

1045

1046 As used in this rule:

1047

1048 (A) “Complaint,” “probable cause,” and “misconduct” have the same meanings  
1049 as in Gov. Bar R. V;

1050

1051 (B) “Costs” means expenses incurred by the Board of Professional Conduct,  
1052 the Supreme Court, and any panel or commission of judges in conducting proceedings  
1053 under this rule;

1054

1055 (C) “Disciplinary sanction” means any of the sanctions set forth in Gov. Bar R.  
1056 V, Section 12, removal, or suspension from office;

1057

1058 (D) “Good cause,” for purposes of Sections 4(A) and (B)(1) of this rule, means  
1059 that, based on a review of a grievance and any response received, there exists an  
1060 articulable legal and factual basis to warrant further investigation of the allegations  
1061 contained in the grievance;

1062

1063 (E) “Judicial candidate” has the same meaning as in Rule 4.6 of the Code of  
1064 Judicial Conduct.



# Ethics Opinions and Cases

## Materials Provided by:

*Richard A. Dove, Esq.*

Director

Board of Professional Conduct

*D. Allan Asbury, Esq.*

Senior Counsel

Board of Professional Conduct



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

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

<b>Op. No. 03-8 (December 5, 2003)</b>	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).
<b>Op. No. 09-11 (December 4, 2009)</b>	Charitable contributions from personal or judicial campaign funds.
<b>Op. No. 2010-7 (December 3, 2010)</b>	Judicial use of and participation in social networking sites.
<b>Op. No. 2014-1 (January 31, 2014)</b>	Standard for disqualification when counsel is a participant in a judge's current campaign.
<b>Op. No. 2017-8 (December 8, 2017)</b>	Judicial participation in parades.
<b>Op. No. 2018-4 (August 3, 2018)</b>	Political and campaign activities of magistrates.



**DISCIPLINARY SANCTIONS IMPOSED FOR JUDICIAL CAMPAIGN VIOLATIONS<sup>1</sup>**

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

**NOTES:**

- Cases in *italics* were decided by the Supreme Court of Ohio; all other cases are orders of a five-judge commission appointed by the Supreme Court
- Fines and costs appear in parenthesis
- \* indicates the sanction imposed was more severe than initially recommended
- \*\* indicates the sanction imposed was less than initially recommended

<sup>1</sup> 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.

<sup>2</sup> *O'Neill* involved misconduct in addition to judicial campaign misconduct.



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**CASE SUMMARIES**  
**(July 1995 through December 2018)<sup>1</sup>**

- *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

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<sup>1</sup> 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.

hearing time contained in Gov. Jud. R. II, Section 5; and (5) the parties' difficulty in obtaining documentation and witnesses to prove the case.

- *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* (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*, [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*, [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*, [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*, [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 11<sup>th</sup> 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.

➤ *Disciplinary Counsel v. Tamburrino*, [2016-Ohio-8014](#)

Respondent was charged with violations of Jud. Cond. R. 4.2(A)(1) and Jud. Cond. R. 4.3(A) based on the content of two campaign commercials that were aired during the final days of the 2014 general election campaign. One commercial criticized his opponent's concurring opinion in which a majority of the court of appeals ruled that police could not enter a home without a warrant to arrest a parent who was hosting a teenage drinking party. The audio portion of the advertisement stated that the opponent "felt teenage drinking wasn't a serious crime" and "doesn't think teenage drinking is serious." The video portion of the advertisement showed a robed individual standing at a courtroom bench pouring shots of whiskey for children and reiterated that the respondent's opponent "doesn't think teenage drinking is a serious offense." The second commercial, also released a few weeks before the election, claimed that the respondent's opponent refused to "disclose his Taxpayer Funded Travel Expenses."

The respondent's opponent notified the respondent, in writing and in news releases, that the statements contained in each commercial were false. The respondent

continued to run the commercials and issued his own news release reaffirming the truthfulness of the statements and accusing his opponent of fabrications and false accusations.

A hearing panel of the Board of Professional Conduct found the teenage-drinking commercial contained patently false statements about the respondent's opponent and that respondent acted knowingly or with reckless disregard about the false statements. The panel also found the statements in the respondent's commercial represented conduct inconsistent with the independence, integrity, and impartiality of the judiciary. The panel made similar findings with respect to the expense-disclosure commercial, finding the opponent's travel expenses had been disclosed publicly and that respondent had never made a request for disclosure of the expenses. The hearing panel recommended a sanction of a six-month stayed suspension. The full Board recommended a one-year suspension with six months stayed, citing the respondent's refusal to acknowledge his blatantly false advertisements and a concern over the chilling effect the advertisements could have on the ability of a judge to freely state his or her views in court opinions.

On review, the Supreme Court overruled the respondent's objections, including his constitutional and procedural arguments, and adopted the Board's findings and recommendations. The Court specifically noted the respondent's continued airing of the commercials after having been put on notice of their falsity and the respondent's lack of remorse and refusal to acknowledge any wrongdoing. The Court concluded by stating:

[Respondent's] misconduct impugned the integrity of his opponent as a jurist and public servant. It endangered the independence of the judiciary and lessened the public's understanding of public records and the protections of the Fourth Amendment.

➤ *In re Judicial Campaign Complaint Against Sherron*, [2017-Ohio-8776](#)

Respondent was charged with two violations of the Code of Judicial Conduct based on the content of campaign communications. In one communication, the respondent posted a resume on Facebook that included the phrase "Licensed to practice in all courts in the State of Ohio and all Federal Courts." Although admitted in Ohio, the respondent was admitted to practice in only the U.S. District Court for the Southern District of Ohio. The false statement regarding his federal court licensure violated Jud. Cond. R. 4.3(I).

A second communication related to invitations to a fundraising event hosted by the respondent. A paper invitation was mailed by the respondent's campaign committee

that invited persons to a fundraising event “FOR MIDDLETOWN MUNICIPAL COURT JUDGE James Sherron.” An email communication containing the same language was sent via email by the county political party. The hearing panel found that the respondent’s conduct in distributing a paper invitation that contained the title “judge” immediately preceding the respondent’s name, was a violation of Jud. Cond. R. 4.3(C). The panel did not find a violation with regard to the email communication distributed by the political party.

After considering the respondent’s misconduct, the fact that the false statement regarding licensure had been rectified, and case precedents, the panel recommended a fine of \$200 for the Jud. Cond. R. 4.3(I) violation and a \$600 fine for the Jud. Cond. R. 4.3(C) violation. A five-judge commission appointed by the Supreme Court adopted the panel’s findings and imposed the recommended sanction.

- *In re Judicial Campaign Complaints Against Lombardi & McCarty*, [2018-Ohio-5173](#)

Respondents were former judges who were seeking to return to the bench. In their 2018 campaigns, each respondent used campaign materials (banners, t-shirts, buttons, etc.) that he had used in a prior campaign for judicial office that failed to satisfy the “prominent lettering” standard contained in Jud. Cond. R. 4.3(D) and defined in Jud. Cond. R. 4.3. As an aggravating factor, the hearing panel found that each respondent failed to review his prior campaign materials, as required by Jud. Cond. R. 4.2(A)(2), to determine whether those materials satisfied the standards applicable to judicial campaign conduct in 2018. The panel also noted that each candidate attended the required judicial campaign conduct seminar and certified both completion of the course and understanding of the requirements of the Code of Judicial Conduct. Based on these findings and a determination that the respondents had ceased using the incorrect materials prior to the hearing, the hearing panel recommended a fine of \$1,200 for each respondent. The hearing panel’s findings and recommendation were adopted by the five-judge commission.