

Judicial Election Oversight Committee

2022 Judicial Elections

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The Judicial Election Oversight Committee (“Oversight Committee”) has received a complaint regarding a judicial candidate’s campaign materials. The complaint raises two issues regarding the candidate’s campaign materials, and the Oversight Committee has noted a third issue with the materials.

I. Use of the title “Judge”

The candidate (“John Doe”) currently serves as a justice court judge and is a candidate for county court judge. The Oversight Committee has received photographs of a car magnet and push card for Judge Doe that state, “Judge [John Doe] for [_____] County Court Judge.” These materials fail to disclose that Judge Doe is currently a justice court judge, not a county court judge. Judge Doe’s opponent in the election is the incumbent county court judge.

The former Special Committee on Judicial Election Campaign Intervention (“Special Committee”) addressed this issue in several prior public opinions and statements. For example, in Opinion 2018-26, the Special Committee addressed a complaint regarding a candidate for circuit judge (“O”) who was then serving as a municipal judge. The candidate’s signs and other campaign materials referred to the candidate as “Judge [O]” but failed to clearly state that Judge O was a municipal judge, not a circuit judge. The Special Committee found that Judge O was in violation of Canon 5A(3)(d)(iii) of the Mississippi Code of Judicial Conduct. Reaffirming Opinion 2006-002, the Special Committee again stated as follows:

Canon 5A(3)(d)(iii) prohibits a candidate from knowingly misrepresenting their qualifications or present position. The Special Committee is of the opinion that a candidate who holds another judicial office may use the title “Judge” in campaign materials subject to certain limitations. The campaign material must clearly identify the circumstances justifying use of the title, including identifying the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate’s present position, and must make clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election.

In Opinion 2018-26, the Special Committee cited additional prior public opinions that reached the same conclusion in similar cases.

In the present case, we reach the same conclusion as the former Special Committee. Judge Doe's use of the title "Judge" in his campaign materials without specifying the judgeship that he currently holds is misleading and violates Canon 5A(3)(d)(iii). Judge Doe should immediately cease distributing signs, push cards, and any other campaign materials that use the title "Judge" without clearly specifying that Judge Doe currently is a justice court judge, not a county court judge. In addition, Judge Doe should immediately correct any of his campaign's websites or social media accounts that use the title "Judge" without clearly specifying that Judge Doe currently is a justice court judge, not a county court judge. Finally, as soon as possible and by no more than **ten days** from the date of this Opinion, Judge Doe shall take down or alter/correct any campaign signs or car magnets that use the title "Judge" without clearly specifying that Judge Doe currently is a justice court judge, not a county court judge. Judge Doe may continue to use the title "Judge" by altering his signs and other campaign materials to read, "Justice Court Judge [John Doe] for [] County Court Judge." If Judge Doe continues to use the title "Judge" in signs or other campaign materials, the words "Justice Court" must be "in an easily readable size and form, such that the materials will not mislead the voter as to [Judge Doe's] present position." Special Comm. Op. 2014-001. Judge Doe may bring his existing signs and other campaign materials into compliance by affixing an easily readable "Justice Court" sticker to his signs/materials. If Judge Doe fails to bring his campaign materials into compliance as set forth above, the Oversight Committee will (a) reissue this Opinion using Judge Doe's name and (b) refer the issue to the Commission on Judicial Performance.

II. Statutorily required disclosures in campaign materials

Mississippi Code Annotated section 23-15-1025 (Rev. 2018) provides as follows:

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars (\$1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

See also Miss. Code Ann. § 23-15-897 (Rev. 2018) (imposing similar requirements applicable to campaign materials distributed by any candidate).

The example of John Doe’s push card submitted to the Committee states, “Paid for by [John Doe].” However, it does not state whether it has been approved by the candidate. The example of John Doe’s car magnet does not appear to provide any of the information required by section 23-15-1025. These campaign materials violate section 23-15-1025 because they do not include all information required by the statute.

John Doe should immediately bring his signs and other campaign materials into compliance with section 23-15-1025. Such signs may comply with the statute by stating, for example, “Paid for [John Doe]. Submitted to and approved by [John Doe].” If the materials are paid for/distributed by a committee to elect John Doe, then they shall so state and shall also identify the committee’s officers. Judge Doe should immediately cease distributing any campaign materials that do not comply with section 23-15-1025. In addition, as soon as possible and by no means more than **ten days** from the date of this Opinion, Judge Doe shall take down or alter/correct any campaign signs or car magnets that do not comply with the statute. Judge Doe may bring his existing signs/campaign materials into compliance by placing a sticker on his campaign materials that includes all statutorily required information. If Judge Doe fails to bring his campaign materials into compliance as set forth above, the Oversight Committee will (a) reissue this Opinion using Judge Doe’s name and (b) refer the issue to the Commission on Judicial Performance.¹

III. Urging voters to “fill the void” by providing “male presence” “in the lives of our youth”

The sample of John Doe’s push card submitted to the Oversight Committee states in part, “A MISSING FIGURE IN THE LIVES OF OUR YOUTH IS MALE PRESENCE. AS A FIRST STEP FOR OUR YOUTH, JOIN WITH ME ON NOVEMBER 8, 2022, TO FILL THE VOID AND INSPIRE OUR YOUTH.” The complainant alleges that this language is sexist and implies that only a male is fit for the job. The complainant requests an opinion as to whether the language violates the Code of Judicial Conduct.

Without in any way endorsing Judge Doe’s speech, the Committee concludes that his speech is protected by the First Amendment to the United States Constitution. *See generally Miss. Comm’n on Judicial Performance v. Wilkerson*, 876 So. 2d 1006 (Miss. 2004) (holding that a justice court judge had a First Amendment right to express his views on homosexuality in a letter to the editor in a local newspaper and in a subsequent radio interview); *see also Republican Party of Minn. v. White*, 536 U.S. 765 (2002) (holding that judicial candidates have a First Amendment right to announce their views

¹ The Oversight Committee notes that the former Special Committee similarly directed a candidate “and his committee to immediately place the required statutory language on all campaign signs or remove such signs from public view.” Special Comm. Op. 2018-27.

on disputed legal and political issues). Therefore, the Committee concludes that Judge Doe's speech is not subject to sanctions under the Code of Judicial Conduct.

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In summary, the Oversight Committee concludes that Judge Doe's campaign materials violate Canon 5A(3)(d)(iii) of the Mississippi Code of Judicial Conduct because they fail to clearly identify Judge's Doe's current position and violate Mississippi Code Annotated section 23-15-10125 because they fail to include all disclosures required by statute. Judge Doe should promptly alter/correct or remove all such campaign materials as set forth above. The Oversight Committee concludes that the speech discussed above in Part III is protected by the First Amendment to the United States Constitution.