

***Special Committee on Judicial Election Campaign Intervention
2018 Judicial Elections***

2018-06 Opinion

The Special Committee on Judicial Election Campaign Intervention received a complaint against Candidate C and the Committee to Elect Candidate C.

Candidate C served as the _____ County Youth Court Referee from 2012 until 2017. In campaign materials, Candidate C indicates that she has served as “Youth Court Judge” when she was the “Youth Court Referee.” The complaint alleges that this reference is false and misleading and in violation of Canon 5A(3)(d)(iii), Special Committee Opinion 2014-001, Special Committee Opinion 2006-002, and Special Committee Public Statement dated November 1, 2006.

1. *Improper Use of “Judge”*

The complaint alleges two violations by the improper use of the term “Judge”. First, on April 9, 2018, the candidate’s committee chair mailed a letter to members of the bar that stated – “For five years, Judge [Candidate C] worked tirelessly in her appointed position as a Youth Court Judge in _____ County” and it also referred to “Judge [Candidate C].” Second, the campaign website states that Candidate C has experience as “Youth Court Judge, _____ County Youth Court” from 2012-2017.

The complaint alleges that it is a misleading statement to refer to Candidate C as “Judge [Candidate C]” when she served as Youth Court Referee in _____ County from 2012 through 2017. Further, the complaint also noted that a full-time County Court Judge was established in _____ County and has handled all Youth Court matters since January 2, 2018.

Candidate C does not dispute that her campaign materials refer to her experience as a Youth Court “Judge”. She argues that Youth Court “Referee” may properly use the term “Judge” in campaign materials, and this usage of the term “Judge” is neither inaccurate, misleading nor incorrect. Her website also includes the fact that she currently serves as the “Judge Pro Tem in _____ County Youth Court.”

The Special Committee on Judicial Election Campaign Intervention finds that Candidate C has served as a appointed Youth Court “Referee.” Further, the Special Committee recognizes that a “Referee” is statutorily authorized to perform judicial functions, the position of “Referee” is not equivalent to that of an elected or appointed judge as contemplated by the statutes and the Mississippi Constitution.

The Special Committee on Judicial Election Campaign Intervention finds that it is a violation of Canon 5A(3)(d)(iii) for a candidate who has served as a Youth Court “Referee” to refer to themselves as a “Judge” in campaign materials. The use of the term

“Judge” without an explanation that the candidate was appointed as a “Referee”, under the Youth Court statutes, is misleading. Canon 5A(3)(d)(iii) of the Code of Judicial Conduct provides that “[a] candidate for judicial office shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate. . . .” Thus, for a candidate who has served as a Youth Court “Referee” to use the term “Judge” in campaign materials it is necessary that the campaign material clearly identifies the circumstances justifying the use of the title and identifies the proper title of the position actually held.

Pursuant to Canon 5F(3) of the Code of Judicial Conduct, the Special Committee has determined that the matter warrants speedy intervention. Therefore, the Special Committee hereby issues a cease and desist request whereby Candidate C and her campaign committee are required to cease and desist from any use of the term “Judge” in campaign materials, as it does not accurately reflect her qualifications and positions held.

This opinion is consistent with Special Committee Opinion 2006-002 and Opinion 2014-001. In addition, the Special Committee relies on Mississippi Code Annotated sections 43-21-107 and 111 for the statutory authority of a Youth Court Referee.

2. *Improper Use of “Judge” by an Independent Third Party*

Next, the complaint alleges that, on June 6, 2018, Jane Doe sent an email to Realtors and brokers around the _____ area endorsing Candidate C. The email contained a statement that Candidate C had “Six years experience as a Youth Court Judge.” The complaint contends that this statement is misleading and it is a violation of Canon 5A(3)(d)(iii).

In her response, Candidate C states that she has limited control over an independent supporter.

Pursuant to Canon 5(F)(2), the Special Committee is authorized to issue “[o]pinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election”

Also, pursuant to Canon 5(A)(3)(c) provides that “[a] candidate for a judicial office . . . shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon.” Based on the information included in the letter, the Special Committee is of the opinion that the information included in Jane Doe’s letter appears to have been provided to her by Candidate C or her campaign committee.

Consistent with the opinion in above, the Special Committee on Judicial Election Campaign Intervention finds that it is a violation of Canon 5A(3)(d)(iii) for the candidate

to include any misleading information in campaign materials including the reference that the candidate was a “Judge” when in fact the candidate who has served as a Youth Court “Referee.”

Pursuant to Canon 5F(3) of the Code of Judicial Conduct, the Special Committee has determined that the matter warrants speedy intervention. Therefore, the Special Committee hereby issues a cease and desist request whereby Jane Doe will be asked to cease and desist from any use of the term “Judge” in campaign materials, as it does not accurately reflect her qualifications and positions held by Candidate C.

A copy of this opinion will be sent to Jane Doe for her future compliance.

3. *Improper Use of Judicial Robe*

The complaint also alleges that the campaign website includes several photographs of Candidate C in a judicial robe. The complaint contends that such photographs of Ms. Candidate C are misleading as to her qualifications and is a violation of Canon 5A(3)(d)(iii). *See* Special Committee Opinion 2014-001.

In Opinion 2014-001, the Special Committee determined:

Canon 5A(3)(d)(iii) . . . prohibits a candidate for judicial office from knowingly misrepresenting his/her “qualifications, present position, or other fact concerning the candidate” The Special Committee has previously opined that a candidate who holds another judicial office may use the title “judge” in campaign literature if the material clearly identifies the circumstances justifying the use of the title and identifies the judgeship currently held. *See* Special Committee Opinion 2006-002. . . .

All candidates for judicial office are held to a high standard of accuracy in their campaign advertisements. Judicial robes, often used by candidates in judicial campaign materials, are a widely recognized symbol of judicial office. Like the use of the term “judge,” the depiction of a candidate wearing a judicial robe may be misleading in certain circumstances. For example, the depiction of a candidate wearing a robe when he/she currently holds no judicial office and has never held judicial office misrepresents the candidate's present position and violates Canon 5A(3)(d)(iii). Furthermore, in those instances in which a sitting judge seeks a different judicial office or a former judge seeks judicial office, the depiction of the candidate wearing a judicial robe may also imply that the candidate currently holds the office sought. Therefore, the Special Committee is of the opinion that while a candidate who presently holds or previously held a judicial office may be

depicted in campaign materials wearing a judicial robe, the advertisements must also clearly identify the office currently or previously held in an easily readable size and form, such that the materials will not mislead the voter as to the candidate's present position.

Consistent with the previous ruling, the Special Committee on Judicial Election Campaign Intervention finds that it is a violation of Canon 5A(3)(d)(iii) for a candidate who has served as a Youth Court “Referee” to depict themselves in a judicial robe, without a clear explanation of the judicial roles of the positions held.

This opinion is consistent with Special Committee Opinion 2006-002 and Opinion 2014-001.

This opinion is limited to the scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct.

Any questions should be in writing and directed to:

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