

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

2018-11 Opinion

On July 9, 2018, the Special Committee on Judicial Election Campaign Intervention released Opinion 2018-06. Thereafter, a complaint was filed against judicial candidate [Candidate C] and the Committee to Elect [Candidate C]. This Complaint alleges that the Candidate and the Committee are in direct violation of Opinion 2018-06 and makes several new claims.

The Candidate and the Committee, through counsel, have responded to the complaint. The Candidate and the Committee have requested a hearing and asked that the Special Committee send this matter to the Commission on Judicial Performance. The Special Committee has denied these requests.

In response to the allegations in the Complaint, the Special Committee finds as follows:

1. The Complaint alleges that the Committee to Elect [Candidate C]'s website ([Candidate C]forjudge.com – updated after the Committee's opinion on July 9, 2018) under "Meet [Candidate C]," includes a statement in bold and large font, "I am the only candidate with judicial experience" and "I have what no other candidate has - actual court experience as a youth court judge." The Complaint claims this is in direct violation of Opinion 2018-06 because the candidate and/or candidate's committee continues to represent that [Candidate C] served as a "Judge" not "Referee."

Finding. The Special Committee has reviewed the website. Under the "Meet [Candidate C]" tab, the Special Committee does not find the statement – "I have what no other candidate has - actual court experience *as a youth court judge.*" Instead, the Special Committee's review finds that the statement – "I have what no other candidate has - actual court experience *as a youth court referee.*" The Special Committee is of the opinion that the Candidate has complied with Opinion 2018-06.

Next, the Special Committee has reviewed the statement – "I am the only candidate with judicial experience." In Opinion 2018-06, the Special Committee recognized the distinction between a Youth Court "Judge" and a "Referee."¹ Here, the Candidate has

¹ The position of Youth Court "Referee" is created by statute. The Mississippi Legislature used the title "referee" and "judge" to indicate separate positions. Mississippi Code Annotated section § 43-21-111 is the statutory authority for a "Referee." The Legislature chose to give the "referee" authority that is "judicial" in nature. For example, subparagraph (1) allows the county court judge to appoint a "referee."

served and continues to serve as a appointed Youth Court “Referee.” The Special Committee has recognized that a “Referee” is statutorily authorized to perform certain judicial functions. Therefore, the Special Committee is of the opinion that the Candidate’s statement – “I am the only candidate with judicial experience” is accurate, truthful, not misleading, and therefore is permissible. The Candidate may state that she has “judicial experience” so long as the campaign material – here the website – clearly identifies the circumstances justifying the Candidate’s “judicial experience.” On the website, the Candidate identified the proper title of the positions she actually held that justifies her use of the term “judicial experience. The Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

2. The Complaint alleges that the Committee to Elect [Candidate C]’s website ([Candidate C]forjudge.com – updated after the Committee's opinion on July 9, 2018) under the “Home” tab, now has a statement in bold and large font stating “The Only Candidate with Judicial Experience.” The Complaint contends this is in direct violation of Opinion 2018-06 for the same reason set forth above.

Finding. As stated above, the Special Committee has opined that a Youth Court “Referee” may claim to have “judicial experience,” so long as the campaign material – here the website – clearly identifies the circumstances justifying the Candidate’s “judicial experience.” The Candidate identified the proper title of the position actually held that justifies her use of the term “judicial experience. The Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

3. The Complaint alleges that the website ([Candidate C]forjudge.com) still contains two photos of [Candidate C] in a judicial robe. One may be found under the “About [Candidate C]” tab and one can be found on the home page. The Complaint contends this is in direct violation Opinion 2018-06.

Finding. In Opinion 2018-06, the Special Committee found that it is a violation of Canon 5A(3)(d)(iii) for a candidate who has served as a Youth Court “Referee” to depict

Subparagraph (2) requires the “referee” receive judicial training. Subparagraph (3) provides that “[t]he judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee. The judge may also delegate his own administrative responsibilities to the referee.” Subparagraph (4) provides that “[a]ll hearings authorized to be heard by a referee shall proceed in the same manner as hearings before the youth court judge. *A referee shall possess all powers and perform all the duties of the youth court judge in the hearings authorized to be heard by the referee.*” (Emphasis added). Subparagraph (5) provides that the “order entered by the referee” may be subject to “rehearing by the judge.” Subparagraph (6) provides that “[t]he salary for the referee shall be fixed on order of the judge.” Subparagraph (7) allows for two counties to agree for the chancellor to “appoint a suitable person as referee.”

themselves in a judicial robe, “without a clear explanation of the judicial roles of the positions held.”

The Special Committee has reviewed the website. The website includes two pictures of the Candidate in a judicial robe. There is a caption under each photograph that states, “[Candidate C] Serving as Youth Court Referee in Hancock County.” The Special Committee is of the opinion that the Candidate has complied with Canon 5A(3)(d)(iii), because the caption under the photograph provides a “a clear explanation of the judicial roles of the positions held.” The Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

4. The Complaint asserts that the Committee to Elect [Candidate C] ran an ad in the July-August 2018 Gulf Coast Women’s Magazine wherein it was stated that she had “six years experience as a Youth Court Judge.” A copy of said advertisement was attached. The Complaint also stated that the complainant understands that this must have gone to press before Opinion 2018-06 was released but would request an official retraction be run in the next available printing of the magazine and would further request that any reprimand released to the local media pursuant to Canon 5F(3)(e)(i-ii) be forwarded to Gulf Coast Women's Magazine as well for publication.

Finding. As stated in the allegation, the Special Committee does not have sufficient facts or evidence to find that the Candidate or the Committee did not comply with Opinion 2018-06 in the advertisement in the July-August 2018 Gulf Coast Women’s Magazine. Also, the Special Committee has no reason to believe that the Candidate or the Committee will not comply with Opinion 2018-06 or this Opinion in future advertisements. The Special Committee does not have the authority to request or order a retraction. The Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

5. The Complaint also asserts that Gulf Coast Women’s Magazine has recognized “Top Influencers” in the community and has named [Candidate C] as one. The magazine has a picture of [Candidate C] on page 120 of the July-August 2018 edition wherein it is stated again that [Candidate C] served as the _____ County Youth Court Judge. A copy of the page was attached to the Complaint. The Complaint also stated that it is understood that this went to press before Opinion 2018-06 was released, but the undersigned would request an official retraction be run in the next available printing of the magazine and would further request that any reprimand released to the local media

pursuant to Canon 5F(3)(e)(i-ii) be forwarded to Gulf Coast Women's Magazine as well for publication.

Finding. For the same reasons discussed above, the Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

6. The Complaint asserts that the Gulf Coast Women's Magazine is hosting their 4th Annual Success Women Conference on September 20 -21, 2018. It is understood that some nominees will be able to make speeches, so the undersigned would request that [Candidate C] be enjoined from making any mention of serving as a “Judge” at said conference whether during an official speech or in casual meetings.

Finding. For the same reasons discussed above, the Special Committee is of the opinion that there is no violation of Opinion 2018-06 or the Mississippi Code of Judicial Conduct.

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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