

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

**2018-22 Opinion**

The Special Committee on Judicial Election Campaign Intervention received a complaint against judicial Candidate N.

The complaint alleged that Candidate N is in violation of Canon 5 of the Code of Judicial Conduct. Specifically, the complaint alleged that Candidate N showcases her father, Judge O, in a television commercial that is being aired on local television stations. In the ad, Judge O is shown in a photograph in his judicial robe and also presiding in the courtroom in his judicial robe. The complaint also alleges that Candidate N has used photographs of Judge O on her push cards and on her campaign website. The complaint also argued, based on information and belief, that Candidate N has requested or allowed Judge O to make phone calls on her behalf asking for donations to benefit her campaign as well as asking for sign placement locations. Further, based on information and belief, Candidate N has requested or has allowed Judge O to attend events with her while she is campaigning.

In response, Candidate N argues that the complaint was filed in bad faith. Candidate N alleges that the complaint was filed by a person who was indicted and had charges pending before Judge O. Candidate N also asserts that the person who filed the complaint is represented by an attorney who filed a motion for Judge O to recuse and supports her opponent. Candidate N argues that the complaint is insufficient and is nothing more than another attempt to harass.

Candidate N admits that Judge O is her father, and her push card includes a photograph with her parents, including Judge O. Further, there is a picture on Facebook of Candidate N and Judge O outside the Secretary of State's Office on January 2, 2018, the morning she qualified to run. She alleges that this was a momentous event in her life and obviously one her parents wanted to be a part of. She contends that her father's picture was included in the commercial as part of her education and history. Candidate N admits that the commercial includes a photograph of Judge O in his judicial robe and a courtroom scene where Judge O is seated on the bench but he is in the background and blurred. He does not speak nor does he say anything on Candidate N's behalf.

Also, Candidate N states that Judge O has attended public community events. She claims that he has neither attended events with her nor campaigned at those events with her. She also claims that she does not know of any specific phone calls Judge O has made or anyone he has asked for donations.

There are several applicable provisions of the Code of Judicial Conduct.

First, Canon 5(A)(1)(b) provides that “a judge or a candidate for election to judicial office shall not . . . publicly endorse a candidate.” The Commentary states “Section 5A(1)(b) does not prohibit judges or judicial candidate from privately expressing their views on judicial candidates or other candidates for public office.”

Second, Canon 5(A)(3)(a) provides that “A candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate.” The Commentary adds:

Although judicial candidates must encourage members of their families to adhere to the same standards of political conduct in support of the candidates that apply to the candidates, family members are free to participate in other political activity. Family members are not prohibited by this subsection from serving on the candidates' campaign committees and otherwise actively involving themselves in the campaigns.

Third, Canon 5(C)(1) provides that “Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election . . . identify themselves as members of political parties, and contribute to political parties or organizations.” The Commentary adds that “Section 5C recognizes the distinction between appropriate political activities by judges and candidates subject to non-partisan election and those subject to partisan elections.”

Finally, Canon 5(D) provides that “[a] judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.”

The Special Committee finds as follows:

1. As to the allegations of the complaint directed to Judge O, the Special Committee finds that Judge O is an incumbent circuit court judge. As an incumbent judge, who is not up for election, Judge O is prohibited by Canon 5(A)(1)(b) from “publicly endors[ing] a candidate.” Canon 5(A)(3)(a) does not permit Judge O, as an incumbent judge, to publicly endorse another judicial candidate even though the candidate is a family member.

The Special Committee has determined that Judge O is prohibited under Canon 5(D) from engaging in any “political activity.” Although the complaint may allege a violation of the Code of Judicial Conduct by Judge O, the Special Committee is of the opinion that it has no jurisdiction as to Judge O. The Special Committee requests Judge O to take no further action that could be considered a “public endorsement” of a candidate, subject to the conduct permissible under Canon 5(A)(1)(b).

The Special Committee does not find sufficient evidence that supports the allegation that Judge O has made phone calls on Candidate N’s behalf asking for donations. Thus, the Special Committee dismisses this allegation.

The Special Committee does not find sufficient evidence that supports the allegation that Judge has violated the Code of Judicial Conduct by asking for placement of sign locations or for improperly attending events on Candidate N’s behalf. Thus, the Special Committee dismisses these allegations.

2. As to the allegations of the Complaint directed to Candidate N, the Special Committee is of the opinion that the Code of Judicial Conduct does not allow Judge O, as an incumbent judge, to engage in political activity. Candidate N and her Committee are prohibited, under Canon 5(A)(1)(b), from using Judge O’s photograph or image, while he wearing a judicial robe, in campaign materials. This would be an improper public endorsement by an incumbent judge. Therefore, the Special Committee instructs Candidate N and her Committee to cease and desist the use of Judge O’s photograph or image, while wearing a judicial robe, in any campaign materials.

The Special Committee is further of the opinion that Candidate N and her Committee may use Judge O’s photograph or image in campaign materials provided he is not wearing a judicial robe and there is no indication that he is an incumbent judge.

Committee Member Thomas A. Wicker recused from this opinion and did not participate.

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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:

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

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