

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

**2018-26 Opinion**

The Special Committee received a complaint against judicial candidate O.

*I. Allegations of Complaint*

The complaint alleges that O has campaigned using the title “Judge” on his signs, on Facebook, in the newspaper, which the candidate has to provide the photograph to be used, on push cards, mail outs, billboards and has had himself introduced at speaking engagements as “Judge [O].” These are all done without clear explanation, or in some cases, no explanation or clear identification that he is not a Circuit Court Judge but is a municipal judge. Candidate O has also posted pictures on his campaign website and Facebook page, along with appearing in a robe seated at the Circuit Court bench without identifying that he is a City Judge and not a Circuit Judge.

The complaint alleges that O has a Facebook page titled “Judge [O],” and includes copies of several campaign materials:

- a. A May 15<sup>th</sup> Facebook post that states “Let me continue to serve as your next circuit court judge.”
- b. Signs that read “Judge O.”
- c. A photograph of O in a robe seated on a courtroom bench.
- d. A September 25<sup>th</sup> Facebook post that includes a sample ballot with O’s name marked, and the statements:
  - Military Service
  - Judicial Experience
  - Family Values
- e. Several Facebook posts from “Judge [O].”

The complaint alleges that O is in violation of Code of Judicial Conduct Canon 5A(3)(d)(iii) which prohibits a candidate for judicial office from knowingly misrepresenting his “qualifications, present position, or other fact concerning the candidate.” And, the complaint alleges that O has blatantly disregarded the Code of Judicial Conduct and the rulings of the Special Committee.

Specifically, the complaint alleges that O is in violation of Special Committee Opinions 2018-06, 2018-09, and 2018-17.

## *II. Candidate's Response*

In response, O argues that the May 15th Facebook post was a photo of me in uniform returning from the war. My campaign is based on service. Service as a Judge, Service as a Deacon in Church, Service as a Soldier. This photo caption reads "Let me continue to serve as your next Circuit Court Judge." Clearly the word "Next" indicates to the audience that I am asking to be the "next" Circuit Court Judge. If I had said, let me continue to serve as "circuit court Judge" it would be a problem. The photo is of a man who has served his country and now wants to serve "as your next Circuit Court Judge."

## *III. Findings.*

### *A. May 15<sup>th</sup> Facebook Post*

The Special Committee has considered the May 15<sup>th</sup> Facebook post. The Special Committee is concerned that the candidate's statement "Let me continue to serve as your next Circuit Court Judge" may be interpreted in such a manner as to be confusing to voters. Canon 5A(3)(d)(iii) prohibits a candidate for judicial office from knowingly misrepresenting his "qualifications, present position, or other fact concerning the candidate." However, the candidate has confirmed to the Special Committee that this statement will not be used again in this election.

Therefore, due to the length of the delay between the post and the complaint and the commitment from the candidate, the Special Committee has determined that it will take no action on this complaint.

### *B. Use of "Judge [O]" on Facebook and Campaign Materials*

The 2018 Special Committee and prior Special Committees have instructed judicial candidates who hold another judicial office as to how the candidate and his/her committee may properly use the title "judge" in campaign materials.

In Opinion 2006-002, the Special Committee opined:

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 it clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election.

This ruling was reaffirmed in a 2006 Public Statement, Opinion 2014-01, a 2014 Public Statement, Opinion 2018-06, and Opinion 2018-09. Indeed, the Special Committee has reaffirmed the statement in Opinion 2010-02 that “[t]he use of the title [“judge”] 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.”

The Special Committee has reviewed the campaign materials submitted in the complaint, the response provided by O, and the campaign Facebook page. The Special Committee finds that O’s use of the phrase “Judge [O]” on his Facebook page, campaign signs, and campaign materials is in a violation of Canon 5A(3)(d)(iii) of the Code of Judicial Conduct which provides that “[a] candidate for judicial office shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate. . . .” and the Special Committee opinions cited above.

The Special Committee orders the candidate and his committee immediately cease and desist the use of the phrase “Judge [O]” on Facebook and campaign materials. The candidate has already changed his Facebook page to remove this statement. The Special Committee orders that the candidate and his committee have until Wednesday, November 21, 2018 at 5:00 p.m. to remove any sign that has this language or to replace the signs or materials with the appropriate language.

The Special Committee instructs the candidate and his committee that the phrase “Judge [O]” may only be used if the such materials clearly identify the circumstances justifying the use of the title and identify the proper title of the position actually held.

### *C. Use of Photograph in Judicial Robe*

In Opinion 2018-17, the Special Committee issued an opinion as to “whether a current municipal judge, who is running for chancery judge, may film a commercial with the Judge in a robe on the bench when court is not in session.” The Special Committee cited Opinion 2014-01 and concluded that “a current municipal judge, who is running for chancery court judge, may film a commercial that depicts the candidate in a judicial robe if, as required by Canon 5A(3)(d)(iii), the candidate clearly explains the judicial role of the position the candidate held.”

The Special Committee also finds that the candidate and his committee have failed to comply with Opinions 2018-17 and 2014-01 because the use of the candidate's photograph in a judicial robe does not "clearly explains the judicial role of the position the candidate held." On the Facebook page, there are two photographs of the candidate in a judicial role. If the viewer clicks on one photograph, it simply says he is a "Judge" in "[ ] MS;" "[ ] (Pro Tem);" and "[ ] (Pro Tem)." There is no explanation that he is a "Municipal" Judge. If the viewer clicks on the second photograph, the viewer must read a significant amount of information before it is explained that the candidate is in fact a "Municipal" Judge.

The Special Committee orders that the candidate and his committee immediately cease and desist the use of any photographs of the candidate in a judicial robe or with the title Judge without a clear explanation of the judicial role of the position held. The candidate must be identified as a Municipal Judge as part of any photograph or in a caption immediately below the photograph.

Special Committee Member Tom 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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