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COURT OF APPEALS

**Special Committee on Judicial Election Campaign Intervention
2020 Judicial Elections**

2020-02 Opinion

The Special Committee on Judicial Election Campaign Intervention (Special Committee) received a request for an opinion on three (3) matters, as follows: (1) whether a judicial candidate or their committee may allow placement of signs in a public right-of-way on Mississippi streets, roads, and highways, and, if so, what actions may be taken; (2) may a judicial incumbent who was appointed to office, now seeking a full term, use the phrase “Re-elect” in campaign materials; and (3) may a judicial candidate use the services of their judicial employees to assist with their campaign.

The Special Committee finds these questions to be of sufficient general interest and importance and therefore renders this formal opinion in synopsis form in accordance with Canon 5F(4)(c) of the Mississippi Code of Judicial Conduct.

Issue I

We begin by addressing the first issue set forth above pertaining to placement of signs in public right-of-way. Canon 5A(3)(a) requires a judicial candidate to maintain the dignity appropriate to judicial office and to 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. Canon 5A(3)(b) prohibits employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate’s direction and control, from doing on the candidate’s behalf what the candidate is prohibited from doing under the sections of Canon 5.

With respect to state highways, Mississippi Department of Transportation (MDOT) provides a guideline on political signs on its web site at the following link:

[https://mdot.ms.gov/portal/guidelines on political signage](https://mdot.ms.gov/portal/guidelines_on_political_signage)

The MDOT guideline reminds political candidates that campaign signs are not permitted on state highway right-of-way, stating that according to Mississippi Code Annotated section 63-3-317, it is illegal to do so and any unauthorized signs are deemed a public nuisance and may be removed by MDOT. Under MDOT regulation 302, “[p]olitical signs located on the rights of way will be removed on a regular basis. No notification is necessary prior to removal. The signs will be held for two (2) weeks at the Maintenance Area Headquarters before disposing of them. Sign owners may retrieve the salvaged signs without penalty.” The MDOT guideline also sets forth rules that pertain to placement of signs.

The request for an opinion fails to set forth any particular municipality and instead refers generically to Mississippi streets, roads, and highways. *See* Special Committee Opinion 2018-05 wherein the Special Committee declined to give an opinion where no ordinance was provided

and no evidence of unethical or unfair conduct was provided. Most municipalities have enacted their own sign ordinances that may define political signs, distance required from right-of-way, post-election removal requirements, and prohibited signs. Candidates should look to the provisions of each municipality as to its particular sign ordinance provisions and requirements.

Issue 2

We next address the question as to whether or not a judicial incumbent who was appointed to office and now seeks a full term may use the phrase “Re-elect” in campaign material.

In addressing this issue, we first turn to the Mississippi Code of Judicial Conduct Canon 5A(3)(d)(iii) that prohibits a candidate from knowingly misrepresenting the identity, qualifications, present position, or other fact concerning the candidate or an opponent. Mississippi Code Annotated section 23-15-849 pertains to the occurrence of judicial vacancies. This provision authorizes the Governor to appoint a qualified person from the district to hold the office upon such occurrences, and defines when an election is to be held. The Special Committee finds that if a judicial candidate incumbent is an incumbent by appointment to fulfill a vacancy and not having been previously elected to that position, then to avoid misrepresentation, the phrase “Re-elect” should not be used unless the person was previously elected to that judicial office now sought. Other more accurate descriptive phrases should be utilized to correctly describe the current status of the appointed judge such as Keep Judge Doe on Court Z.

Issue 3

The third issue before us is whether or not a judicial candidate may use the services of their judicial employees to assist with their campaign. In addressing this issue, we turn to the applicable Canons of the Mississippi Code of Judicial Conduct, statutes, and other applicable personnel policies. Canon 2A of the Mississippi Code of Judicial Conduct requires judges to respect and to comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Also, Canon 5D 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 administration of justice or as expressly authorized by law.

The Employee Manual of the Supreme Court and the Court of Appeals of Mississippi, effective date August 1, 2009, and amended September 18, 2009, addresses political activity of employees of the Supreme Court and the Court of Appeals of Mississippi in Section 3.0 (pages 31-32). The employee manual sets forth that the staff must remain apolitical at all times and sets forth specific prohibited political activities. Additionally, Mississippi Code Annotated section 23-15-874 provides that a candidate for judicial office shall not use court administrators, deputy court administrators, court reporters, deputy court reporters, judges’ secretaries or law clerks as workers in his campaign. The statute provides for violations to be reported to the Commission on Judicial Performance. As set forth in Canon 5F(8)-(9) of the Mississippi Code of Judicial

Conduct, the Special Committee possesses no authority to institute disciplinary action against a candidate for judicial office and that power is specifically reserved to the Commission on Judicial Performance.

Conclusion

This opinion is limited in scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct. As set forth in Canon 5F(3) the objective of the Special Committee is to alleviate unethical and unfair campaign practices in judicial elections.

Any questions should be in writing and directed to the following:

Special Committee on Judicial Election Campaign Intervention

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