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OCT 02 2020
OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

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

2020-03 Complaint

The Special Committee on Judicial Election Campaign Intervention received a complaint that requested action against a judicial candidate. Pursuant to Canon 5F(4)(c) and (d) and 5F(5)-(6) of the Mississippi Code of Judicial Conduct, the Special Committee finds this matter to be a question of sufficient general interest and importance and issues the following decision and opinion. In addressing this complaint, we first turn to the authority of this Special Committee, the complaint alleged, the applicable provisions of Canon 5F of the Code of Judicial Conduct, and other applicable past Special Committee opinion and statutes.

As set forth in Canon 5F(4)(g), both formal and informal opinions of the Special Committee shall be advisory only; however, the Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding. Also, as set forth in Canon 5F(3), the objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections. In no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules. Canon 5F(8).

The complaint contains two allegations. First, the complaint alleges that a judicial candidate violated Mississippi Code Annotated sections 23-15-897(2)(a) and 23-15-1025 because a campaign sign supporting that candidate failed to contain any of the disclosures required by those statutory provisions. Attached to the complaint were photographs of a campaign sign for the judicial candidate that failed to possess any of the required statutory disclosures. In accordance with Canon 5F(5), the candidate was provided notice of the complaint and an opportunity to respond. The judicial candidate then provided the Special Committee with photographs of a campaign sign containing a disclosure at the bottom of the campaign sign that states "Paid for by the Committee to Elect [Candidate's Name]." A complaint was then filed claiming insufficient this partial disclosure that identified that the judicial candidate's campaign committee paid for the sign.

Canon 5C(2) allows candidates to establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law.

Mississippi Code annotated section 23-15-1025 provides that if any material is distributed by the judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not

the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars (\$1,000) or by imprisonment for six (6) months or both fine and imprisonment.

Mississippi Code Annotated section 23-15-897(1)(a) defines campaign materials. Section 23-15-897(1)© defines printed material to include the sign at issue in this complaint. Section 23-15-897(2)(a), (b), and (c) further provides that no candidate, political committee or other person shall publish, or knowingly cause to be published, any campaign materials unless it contains the following information:

(a) The name of the candidate along with a statement that the message is approved by the candidate; or

(b) If the message has not been approved by a specific candidate, the name of the person, political committee or organization paying for the publication of the message; or

(c) If the message has not been approved by the candidate and no person, political committee or organization is identified as having paid for the publication, the entity producing the campaign materials must be identified.

We will first address the complaint as to the disclosure that the yard sign was paid for by the judicial candidate's campaign committee. In prior Special Committee Opinions, 2020-01 and 2018-01, the Special Committee provided that the inclusion of a partial disclosure, the language "approved by the candidate," was sufficient. In so doing, the Special Committee found such substantial compliance sufficient for the purposes of the Special Committee's objective under Canon 5 to alleviate unfair and unethical campaign practices in judicial elections.

In the complaint before us, a campaign sign reflects a disclosure that the yard sign was paid for by the Committee to Elect [Judicial Candidate's Name]. Hence, the yard sign reflects that the candidate's Campaign Committee paid for the yard sign and is responsible for the sign. The judicial candidate is responsible for their campaign committee. In Opinion 2020-01 issued by this Special Committee, we acknowledged that prior opinions of the Special Committee accepted the partial disclosure of "approved by the candidate" as sufficient. *See* past Special Committee Opinions 2020-01 and 2018-01. Based upon the past opinions of the Special Committee, the disclosure provided herein, and space available on a yard sign, we find no unethical or unfair campaign practice in violation of Canon 5 in this case with the substantial compliance provided by the disclosure on the yard sign stating that the yard sign was "Paid for by the Committee to Elect [Judicial Candidate]." It would be inconsistent to disregard the prior opinions of the Special Committee that found partial disclosure sufficient for purposes of this Special Committee. Moreover, this disclosure at issue complies with the objective of this Special Committee to alleviate unethical and unfair campaign practices in judicial elections. The responsible party for the campaign yard sign was disclosed and may be held accountable.

However, prospectively judicial candidates should be on notice to comply with both portions of the statutorily-required disclosures as to whether the judicial candidate approved of the campaign yard sign and as to who paid for the campaign yard sign because jeopardy remains for criminal action and judicial disciplinary action by regulatory and enforcement authorities. This opinion is limited in scope and to meet the objectives of the Special Committee, and the Special Committee expresses no opinion as to the imposition of criminal prosecution or action by the Commission on Judicial Performance.

We now address the Complaint as to the yard campaign signs supporting the judicial candidate that fail to contain any of the statutory disclosures required by Mississippi Code Annotation sections 23-15-1025 and 23-15-897. The use of campaign yard signs without sufficient disclosures violates those statutory provisions and these signs fail to reflect who is responsible for the campaign yard signs. While the response provided from the candidate includes pictures of new signs with the partial disclosures discussed above, the Special Committee directs the judicial candidate and the judicial candidate's campaign committee to bring the signs into compliance or to Cease and Desist from using and from displaying the campaign yard signs that contain no disclosures.

This opinion is limited to the scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct. This Special Committee also expresses no opinion as to the imposition of criminal prosecution or action by the Commission on Judicial Performance. *See* Canon 5F(8).

Any questions should be directed to the following:

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