

Serial: 239346

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99013-SCT

**FILED**

*IN RE: CODE OF JUDICIAL CONDUCT*

NOV 30 2021

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SUPREME COURT  
COURT OF APPEALS

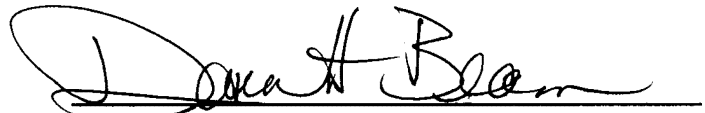
**ORDER**

This matter is before the en banc Court on the Court's own motion. After due consideration, the Court finds Canon 5F of the Code of Judicial Conduct shall be amended as set forth in Exhibit A.

IT IS THEREFORE ORDERED that Canon 5F of the Code of Judicial Conduct is hereby amended as set forth in Exhibit A. The amendment is effective immediately.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this Order upon the minutes of the Court and shall forward a true copy hereof to West Publishing Company for publication in the next edition of the *Mississippi Rules of Court* and in the *Southern Reporter, Third Series (Mississippi Edition)*.

SO ORDERED, this the 30<sup>th</sup> day of November, 2021.



DAWN H. BEAM, JUSTICE  
FOR THE COURT

AGREE: RANDOLPH, C.J., MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ.

DISAGREE: KITCHENS AND KING, P.JJ., AND COLEMAN, J.

**KING, P.J., OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT  
JOINED BY KITCHENS, P.J.**

## **EXHIBIT A**

### **Canon 5F – Mississippi Code of Judicial Conduct**

#### **F. Judicial Election Oversight Committee.**

1. **Proceedings and Authority.** A Judicial Election Oversight Committee (“Oversight Committee”) shall be created to enforce the standards of judicial conduct in judicial elections and provide an accessible forum for advisory opinions in judicial elections. The Oversight Committee shall have the responsibility to issue advisory opinions as to allegations of ethical misconduct in campaigns for judicial office. The Oversight Committee shall be responsible for elections of Supreme Court, Court of Appeals, chancery court, circuit court or county court judges in this state.

2. **Membership.** The Oversight Committee shall consist of nine (9) members. Each Justice of the Supreme Court shall each appoint one member. Each member shall be a resident attorney licensed to practice in the state. Each member shall be subject to the recusal and conflict of interest rules in the Code of Judicial Conduct as if they were a presiding judge in a case. Also, each member shall recuse in any matter that may directly affect the Supreme Court Justice who appointed that member.

3. **Administration.** The members shall elect a Chair, Vice Chair and Secretary. The Oversight Committee shall maintain accurate minutes and records. Action taken shall require a quorum of a majority of the members and a majority vote. The Oversight Committee shall be appointed no later than December 1, 2021. The members shall serve a staggered term of four (4) years. The initial appointments by the Justices from District 1- Place 1, District 2 - Place 1, and District 3 - 1 shall be for four years; the initial appointments by the Justices from District 1 - Place 2, District 2 - Place 2, and District 3 - Place 2 shall be for three years; and the initial appointments by the Justices from District 1 - Place 3, District 2 - Place 3, and District 3 - Place 3 shall be for two years. If a member resigns or is unable to participate, the Justice who appointed the member may appoint another person to serve the remainder of the term.

4. **Role of the Commission on Judicial Performance.** The Commission shall provide administrative support to the Oversight Committee.

5. **Notice.** Within ten (10) days of a judicial candidate’s public announcement or official qualification for election to any judicial office in this state, whichever is earlier, a judicial candidate shall forward written notice of such candidacy and the required campaign committee members to the Commission. This notice must provide contact information, which includes the appropriate mailing address, email address, and telephone number, of the

candidate and the candidate's campaign committee chair and at least two (2) other members of the candidate's campaign committee.

6. Education. The Oversight Committee shall provide educational information to judicial candidates and the campaign committee representatives.

- a. Judicial Election Materials. Upon receipt of such notice, the Oversight Committee shall distribute to each judicial candidate a copy of Canon 5 of the Code of Judicial Conduct; a summary of any previous opinions on judicial elections issued by a previous Special Committee or Oversight Committee organized for prior elections, or the Supreme Court of Mississippi. This distribution may be provided in written or electronic form. In lieu of distribution, the Oversight Committee may post the materials in electronic form on the State of Mississippi Judiciary webpage – [www.courts.ms.gov](http://www.courts.ms.gov) – with the disclaimer that the opinions issued and actions taken by a previous Special Committee or Oversight Committee have not been adopted or approved by the Supreme Court of Mississippi.
- b. Education Seminar. Each year of a judicial election, the Oversight Committee shall conduct a two hour educational seminar for judicial candidates within sixty (60) days of the qualifying deadline. The seminar shall cover topics on judicial election ethics, election laws, Canon 5, and campaign finance requirements. Judicial candidates and the chair of the candidate's Committee (or a designee) are required to attend in person or electronically.
- c. Within ten days of completion of the seminar, each judicial candidate and the Chair of their Committee (or a designee) shall certify their receipt of the Judicial Election Materials, their completion of the seminar, and their understanding of Mississippi law on judicial elections. A judicial candidate without opposition is exempt from attendance at the seminar.

7. Objective. The objective of the Oversight Committee is to alleviate unethical or unfair campaign practices in judicial elections and to provide assistance and direction to judicial candidates and their campaign committees.

- a. Questions. Any person, including judicial candidates, their campaign committees, or unaffiliated persons or organizations, may seek an advisory opinion about conduct of a judicial campaign. Any interested person is encouraged to seek an advisory opinion from the Oversight Committee before such conduct occurs.

b. **Formal Opinions.** The Oversight Committee, on its own or based on a question, may investigate and issue an opinion as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign committee or any independent person, organization or committee that conducts activities which impact on a judicial election.

1. If the Oversight Committee finds the question of limited significance, it may provide an informal opinion. Such informal opinion is not required to identify the candidate(s) or person(s) involved.
2. If the Oversight Committee finds that the question is of sufficient general interest and importance, it may render a formal opinion. A formal opinion may be disclosed to the public. The Oversight Committee shall have the authority to decide whether to identify the candidate(s) or person(s) involved, but must have provided such candidate(s) or person(s) with reasonable notice and an opportunity to respond to the question in issue.
3. The Oversight Committee may decline to issue an opinion when a majority of the members determine that it would be inadvisable to respond to the request. The Oversight Committee should provide a written explanation of its reasoning to the person who requested the opinion.
4. The Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate or campaign committee member upon a formal opinion in any disciplinary or enforcement proceeding.

8. The proceedings under this Rule shall be informal and non-adversarial. The Oversight Committee shall act on all requests within ten (10) days of receipt. In the ten (10) days before the election, the Oversight Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, in no event, within thirty-six (36) hours.

9. The proceedings of the Oversight Committee shall remain confidential. The Oversight Committee shall report any violations of the Code of Judicial Conduct or election law to the appropriate authorities. The Oversight Committee, however, does not have the authority to institute disciplinary action against any judicial candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

10. The Oversight Committee shall provide the Supreme Court and the Commission on Judicial Performance an annual report of its actions, along with a copy of all information and proceedings related thereto, no later than December 31st of each year. The Oversight Committee may also advise the Supreme Court as to any proposed changes or modifications to the Code of Judicial Conduct that relate to judicial elections or the authority or scope of the Oversight Committee.

*[Commentary Deleted]*

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 89-R-99013-SCT**

**KING, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:**

- ¶1. I object to the entry of this order.
- ¶2. The Mississippi Supreme Court, concerned with the significant decline in the level of ethical conduct in judicial campaigns, sought to address this problem. It did so by the adoption of Canon 5F of the Code of Judicial Conduct. Canon 5F established a “Special Committee on Judicial Election Campaign Intervention” that was created “to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office.” Miss. Code of Jud. Conduct Canon 5F(1). Not only was the Court concerned about the lapse in ethical conduct by judicial candidates, it was also concerned about the questionable conduct of third parties that, while claiming to be independent of a candidate, actively engaged in the campaign with a message to benefit a particular candidate. But most importantly, the Court was concerned with the right of the public to have and observe ethical judicial elections that result in the election of candidates committed to honoring the judicial oath of office, which states:

I, [name], solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as [judicial office] according to the best of my ability and understanding, agreeably to the Constitution of the United States and the Constitution and laws of the State of Mississippi. So help me God.

Miss. Const. art. 6, § 155 (internal quotation marks omitted).

¶3. Today, the Court’s majority lowers its expectations of the need for ethical conduct in judicial elections by the candidates and by third parties, and it thumbs its collective nose at the public’s right to expect and observe ethical judicial elections. That this is the effect of the majority’s actions can readily be seen by its failure to provide the public with an opportunity to comment on and react to the changes to Canon 5F.

¶4. The majority changes the Committee’s name to “Judicial Election Oversight Committee” and gives it the obligation to “enforce the standards of judicial conduct in judicial elections.” Order, Exhibit A. After this impressive sounding change of name, the majority immediately restricts the Committee’s responsibility to “issu[ing] advisory opinions as to allegations of ethical misconduct in campaigns for judicial office.”<sup>1</sup> But the majority goes further than simply restricting this Committee, and again thumbs its collective nose at the public’s interest in ethical judicial elections by making discretionary the disclosure to the public of the substance of any Committee opinions.<sup>2</sup> Order, Exhibit A (“A formal opinion *may* be disclosed to the public.” (emphasis added)).

¶5. The majority also substantially strips from the Committee its oversight of third parties. Previously, opinions on the propriety of conduct “by a judicial candidate, a candidate’s

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<sup>1</sup>The Committee previously had the responsibility to “issue advisory opinions *and to deal expeditiously with allegations of ethical misconduct* in campaigns for judicial office.” Miss. Code of Jud. Conduct Canon 5F(1) (emphasis added). In doing so, the Committee was empowered not only to issue advisory opinions, but also to issue cease-and-desist orders and release public statements. Miss. Code of Jud. Conduct Canon 5F(4), (6).

<sup>2</sup>The Committee was previously required to publish all formal opinions. Miss. Code of Jud. Conduct Canon 5F(4)(c).



campaign organization or an independent person, committee or organization conducting activities which impact on the election” could be requested by anyone. Miss. Code of Jud. Conduct Canon 5F(4)(a). Further, the Committee could issue cease-and-desist orders to or public statements regarding third parties. Miss. Code of Jud. Conduct Canon 5F(6). The majority now restricts the Committee to opinions regarding third parties only upon its own accord. Outside persons may only raise questions about “conduct of a judicial campaign” and no one else. Order, Exhibit A. In doing so, the majority has chosen to ignore the fact that the fastest growing area of questionable ethical conduct in judicial elections is that of third party action. A supposedly independent third party may take actions of dubious ethical propriety intended to benefit a specific candidate, all while allowing that candidate to claim a lack of connection to the questionable conduct. At the very least, the Committee’s authority should include the authority to request that a candidate disavow unethical third party actions intended for the benefit of that candidate. A candidate who has knowledge of unethical third party conduct and ignores that unethical conduct while accepting its benefits is complicit in that unethical conduct. *See, e.g.*, Miss. Code of Jud. Conduct Canon 3D (requiring judges with knowledge of certain rules violations by judges or lawyers to report the violations); Miss. R. of Prof. Conduct 8.3 (requiring lawyers with knowledge of certain rules violations by judges or lawyers to report the violations). If a candidate declines to separate his or her candidacy from unethical third party actions, that is a matter that, in the interest of having ethical judicial elections, the public has a right to know. But the majority sticks its collective head in the clouds and pretends that this problem does not exist.

¶6. The majority's amendments to Canon 5F do nothing to enhance the ethical conduct in judicial elections. Instead, the majority weakens Canon 5F while attempting to maintain the illusion of support for ethical judicial elections. Indeed, rather than undermine ethical judicial elections with these amendments, it would be better for this Court to continue Canon 5F as it exists.

¶7. For these reasons, I object to the entry of this order.

**KITCHENS, P.J., JOINS THIS SEPARATE WRITTEN STATEMENT.**