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Judicial Election Oversight Committee

2022 Judicial Elections

Public Opinion No. 2022-05

2021-M-01306-SCT

The Judicial Election Oversight Committee (“Oversight Committee”) has received a complaint that a candidate for county court judge (“John Doe”) has distributed signs and other campaign materials that do not comply with Mississippi Code Annotated section 23-15-1025 (Rev. 2018). That statute provides as follows:

If any material is distributed by a 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 (\$1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

See also Miss. Code Ann. § 23-15-897 (Rev. 2018) (imposing similar requirements applicable to campaign materials distributed by any candidate).

The Oversight Committee has been provided with multiple photographs of Doe’s yard signs that do not contain any of the disclosures required by this statute. In addition, the Oversight Committee has been provided with one photograph of a Doe yard sign that includes the disclosure, “Approved By [John Doe].” Finally, the Oversight Committee has been provided with a photograph of Doe’s push card that includes the disclosure, “Paid for & approved by the Committee to Elect [John Doe].”

In Opinion No. 2018-01, the former Special Committee on Judicial Election Campaign Intervention (“Special Committee”) concluded that

the inclusion of the language “approved by the candidate” is sufficient to indicate the material was submitted to the candidate, approved by the candidate, and paid for/distributed by either the candidate or the candidate’s committee as the disclaimer.

Special Comm. Op. No. 2018-01 at 2-3; *accord* Special Comm. Op. No. 2020-01 at 2-3.

In Opinion No. 2020-03, the Special Committee considered a yard sign that disclosed that it was “Paid for by the Committee to Elect [Judicial Candidate’s Name].” The Special Committee found that the language of the disclosure was not an “unethical or unfair campaign practice in violation of Canon 5” of the Code of Judicial Conduct. The Special Committee reasoned as follows:

[T]he 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. 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.

Special Comm. Op. No. 2020-03 at 2 (citations omitted).

However, the Special Committee also cautioned that “prospectively judicial candidates should be on notice to comply with *both* portions of the statutorily-required disclosures”—i.e., campaign materials should disclose *both* “whether the judicial candidate approved of the campaign yard sign *and* . . . who paid for the campaign yard sign.” *Id.* at 3 (emphasis added). The Special Committee encouraged such disclosures because, notwithstanding prior Special Committee opinions, “jeopardy remains for criminal action and judicial disciplinary action by regulatory and enforcement authorities.” *Id.*¹ The Special Committee stated that Opinion No. 2020-03 was “limited in scope and to meet the objectives of the Special Committee, and the Special Committee expresse[d] no opinion as to the imposition of criminal prosecution or action by the Commission on Judicial Performance.” *Id.*

In addition, in Opinion No. 2018-25, the Special Committee noted that section 23-15-1025 provides that all campaign materials “shall conspicuously identify who has prepared the material and who is distributing the material.” Special Comm. Op. No.

¹ As noted above, noncompliance with section 23-15-1025 is a misdemeanor.

2018-25 at 2 (quoting Miss. Code Ann. 23-15-1025). The Special Committee concluded that this statutory “language requires that the disclaimer be on each side of a sign that has printed campaign related material.” *Id.*

Finally, in Opinion No. 2018-27, the Special Committee addressed a complaint regarding a candidate who admitted that his yard signs did not include the required disclosures. The candidate states that the “oversight was inadvertent and . . . [would] be corrected the next time campaign signs [were] printed.” Special Comm. Op. No. 2018-27 at 1. Nonetheless, the Special Committee directed the candidate “and his committee to immediately place the required statutory language on all campaign signs or remove such signs from public view.” *Id.*

Returning to the present case, to the extent that candidate John Doe’s yard signs, push cards, or other campaign materials include a “partial disclosure” of the information required by Mississippi Code Annotated section 23-15-1025, the Oversight Committee will follow prior opinions of the former Special Committee. This would include campaign materials that state that they are “Approved By [John Doe]” or “Paid for & approved by the Committee to Elect [John Doe].” Based on Opinion Nos. 2018-01, 2020-01, and 2020-03, the Oversight Committee concludes that such materials do not constitute an “unethical or unfair campaign practice in violation of Canon 5” of the Code of Judicial Conduct. Special Comm. Op. No. 2020-03 at 2. However, the Oversight Committee once again encourages candidate Doe and all other judicial candidates to disclose *all* information required by statute on yard signs and other campaign materials. *Id.* at 3. Like the former Special Committee, the Oversight Committee “expresses no opinion” as to whether partial disclosures could result in “criminal prosecution or action by the Commission on Judicial Performance.”

Candidate John Doe’s yard signs that include *no* statutorily required disclosures are another matter. Based on the plain language of section 23-15-1025 and prior opinions of the former Special Committee, such signs are a clear violation of the law. Consistent with Opinion No. 2018-27, Doe should immediately bring his signs and other campaign materials into compliance with section 23-15-1025. Such signs may comply with the statute by stating, for example, “Paid for [John Doe]. Submitted to and approved by [John Doe].” If the signs are paid for/distributed by a committee to elect Doe, then they should so state and identify the committee’s officers. Doe should immediately cease distributing any signs that do not comply with section 23-15-1025. In addition, as soon as possible and by no means more than **ten days** from the date of this Opinion, Doe shall take down or alter/correct any signs that do not comply with the statute. Doe may bring his existing signs into compliance by placing a sticker on the signs that includes all statutorily required information. If Doe fails to bring his signs into compliance as set forth above, the Oversight Committee will (a) reissue this Opinion using Doe’s name and (b) refer the issue to the Commission on Judicial Performance.