

Canon 5F(3) – Mississippi Code of Judicial Conduct

(3) Upon receipt of information facially indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the same by e-mail or facsimile, if available, and U.S. mail to the Special Committee members and said Committee shall:

(a) in a manner determined by the Committee, provide the candidate with notice and an opportunity to respond;

(ba) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;

(cb) conduct such additional investigation as the Committee may deem necessary;

(dc) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(d)(i) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.

(ed) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:

(i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the

limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and

(ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.

....

Commentary

This Section 5F does not appear in the ABA Model Code and was added with the adoption of this Section 5. Similar provisions have been adopted for South Dakota and Georgia. See South Dakota Rules of Commission on Judicial Qualifications, Rule IV and Rules of Georgia Judicial Qualification Commission, Rule 27. In Weaver v. Bonner, 114 F. Supp. 2d 1337 (N.D. Ga. 2000), a constitutional challenge to the Georgia rule was rejected, the court saying the government may “participate in the marketplace of ideas” and “contribute its own views to those of the other speakers. Weaver at 1345, quoting Muir v. Ala. Educ. Television Comm’n, 688 F. 2d 1033, 1037 (5th Cir. 1982). In Weaver, the court also specifically found the procedures adequate to satisfy due process requirement.

Provision is made for the Special Committee to issue opinions to judicial candidates. Ordinarily, absent extraordinary circumstances or statutory authority to the contrary, when a judge or candidate, relying on the opinion of the Special Committee, acts in accordance with the opinion and the opinion is based on a full disclosure of facts and circumstances, the judge or candidate will not be subject to disciplinary or enforcement action or liability.