

PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, THE SUPREME COURT OF MISSISSIPPI SEEKS COMMENTS FROM THE BENCH, THE BAR AND THE PUBLIC ON PROPOSED AMENDMENTS TO THE CODE OF JUDICIAL CONDUCT.

Comments should be filed with the Clerk of the Supreme Court, Gartin Justice Building, P.O. Box 249, Jackson, Mississippi 39205-0249.

Deadline: **Monday, November 4, 2019.**

The Court specifically seeks public comment regarding the possible repeal of Canon 5F of the Code of Judicial Conduct (provided below).

CANON 5

**A Judge or Judicial Candidate Shall Refrain
From Inappropriate Political Activity**

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F. Special Committee--Proceedings and Authority. In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The committee shall consist of five (5) members. The Chief Justice of the Supreme Court; the senior justices of Supreme Court Districts 1, 2, and 3, excluding the Chief Justice; and the Chief Judge of the Court of Appeals, shall each appoint one member. All members shall be attorneys licensed to practice in the state. No person shall be appointed to serve as a member of a Special Committee for the year in which such person is a candidate for judicial office. Should the Chief Justice of the Supreme Court expect to be a candidate for judicial office during the year for which a Special Committee is to be appointed the Chief Justice shall declare such expectation, and in such event, the appointment which otherwise would have been made by the Chief Justice shall be made by the next senior justice of the Supreme Court who is not otherwise charged with appointing authority under this Canon and not seeking judicial office in such year. Should a senior justice of Supreme Court Districts 1, 2, or 3, excluding the Chief Justice, expect to be a candidate for judicial office during such a year, the next senior justice of the same Supreme Court District who is not otherwise charged with appointing authority and is not seeking judicial office shall make the appointment. Likewise, should the Chief Judge of the Court of Appeals expect to be a candidate for judicial office during such

a year, the next senior judge of the Court of Appeals who is not seeking judicial office shall make the appointment. Any action taken by the Special Committee shall require a majority vote. Each Special Committee shall be appointed no later than February 1 in the year of their service, and it shall continue in existence for ninety (90) days following such judicial elections or for so long thereafter as is necessary to consider matters submitted to it within such time. The Commission shall provide administrative support to the Special Committee. Should any appointing authority fail to make an appointment, three members shall constitute a sufficient number to conduct the business of the Special Committee. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(1) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the Commission. Upon receipt of such notice, the Special Committee shall, through the Commission, cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; summaries of any previous opinions issued by the Special Committee, Special Committees organized for prior elections, or the Supreme Court of Mississippi, which relate in any way to campaign conduct and practices; and a form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Section authorizing the Committee to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

(2) Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its own motion under such circumstances, as it finds appropriate. The

Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and shall be a matter of public record except for the names of the persons involved, which shall be excised. Both formal and informal opinions 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.

(3) Upon receipt of a written allegation 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 any person(s), committee(s) or organization(s) which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the allegation by e-mail, and U.S. mail to the Special Committee members and the judicial candidate, and said Committee shall:

(a) in a manner which comports with due process, provide the candidate with a list of provisions he or she is accused of violating, and provide the candidate an opportunity to respond;

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

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

(d) 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)(e)(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.

(e) 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.

(4) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.

(5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and 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.

(6) The Committee shall after conclusion of the election distribute to the Commission on Judicial Performance copies of all information and all proceedings relating thereto.

(7) This Canon 5F shall apply to all candidates for judicial offices of the Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts, be they incumbent judges or not, and to the families and campaign/solicitation committees of all such

candidates. Persons who seek to have their name placed on the ballot as candidates for such judicial offices and the judicial candidates' election committee chairpersons, or the chairperson's designee, shall no later than 20 days after the qualifying date for candidates in the year in which they seek to run complete a two-hour course on campaign practices, finance, and ethics sponsored and approved by the Committee. Within ten days of completing the course, candidates shall certify to Committee that they have completed the course and understand fully the requirements of Mississippi law and the Code of Judicial Conduct concerning campaign practices for judicial office. Candidates without opposition are exempt from attending the course.

Commentary

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.