

## CANON 4

### **A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE *INDEPENDENCE, INTEGRITY, OR IMPARTIALITY* OF THE JUDICIARY.**

#### **RULE 4.1**

##### **Political and Campaign Activities of Judges and *Judicial Candidates* in General**

(A) A judge or a *judicial candidate* shall not:

- (1) make speeches on behalf of a *political organization*;
- (2) use or permit the use of campaign *contributions* for the private benefit of the judge, the candidate, or others;
- (3) use court staff, facilities, or other court resources in a campaign for judicial office;
- (4) *knowingly*, or with reckless disregard for the truth, make any false or misleading statement;
- (5) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter *pending* or *impending* in any court; or
- (6) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office.

(B) Except as permitted by *law*, or by Rules 4.2, 4.3, and 4.4, a judge or a *judicial candidate* shall not:

- (1) act as a leader in, or hold an office in, a *political organization*;
- (2) publicly endorse or oppose another candidate for any public office;
- (3) solicit funds for, pay an assessment to, or make a *contribution* to a *political organization* or a candidate for public office;
- (4) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office;
- (5) publicly identify himself or herself as a candidate of a *political organization*; or
- (6) seek, accept, or use endorsements from a *political organization*.

(C) A judge or *judicial candidate* shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or *judicial candidate*, any activities prohibited under paragraphs (A) and (B).

## COMMENT

### GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

### PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (B)(1) from assuming leadership roles in political organizations unless allowed under Rule 4.3(B).

[4] Paragraphs (A)(1) and (B)(2) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from inappropriately using the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf in a retention election [See Rule 4.2(B)(2)], campaigning on their own behalf or against any opponent in a nonpartisan election [See Rule 4.2(C)(2)], or from campaigning on their own behalf or from endorsing or opposing candidates for the same judicial office for which they are running in a partisan public election [See Rule 4.2(D)(3)(a) and (c)].

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (B)(2) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure is not prohibited by paragraphs (A)(1) or (B)(2).

### STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(4) obligates candidates and their committees to refrain from making statements that are

false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(4), (A)(5), or (A)(6), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(5), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(5) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

#### PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(6) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in

appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(6) does not specifically address judicial responses to such inquiries. Judicial candidates may respond but, depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(6), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

## **RULE 4.2**

### **Political and Campaign Activities of *Judicial Candidates* in *Public Elections***

(A) A *judicial candidate* in a retention, nonpartisan, or partisan *public election* shall:

- (1) act at all times in a manner consistent with the *independence, integrity, and impartiality* of the judiciary;
- (2) comply with all applicable election, election campaign, and election campaign fund-raising *laws* and regulations of this jurisdiction;
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for retention to judicial office may, unless prohibited by *law*, and not earlier than one year before the retention election in which the candidate is running:

- (1) establish a campaign committee pursuant to the provisions of Rule 4.4;
- (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature and;

(3) obtain and use publicly stated support from any person or organization other than a partisan *political organization*.

(C) A candidate for nonpartisan election to judicial office may, unless prohibited by *law*, and not earlier than one year before the first applicable primary election, caucus, or general election in which the candidate is running:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy or against any opponents' candidacies through any medium, including but not limited to advertisements, websites, or other campaign literature; and

(3) obtain and use publicly stated support from any person or organization other than a partisan *political organization*.

(D) A judge or a *judicial candidate* subject to partisan *public election* may, unless prohibited by *law*:

(1) at any time

(a) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office;

(b) identify himself or herself as a member of a political party; and

(c) contribute to a *political organization*;

(2) establish a campaign committee pursuant to the provisions of Rule 4.4;

(3) when a candidate for election

(a) speak on behalf of his or her own candidacy or against any opponents' candidacies through any medium, including but not limited to advertisements, web sites, or other campaign literature;

(b) distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(c) publicly endorse or publicly oppose other candidates for the same judicial office in a *public election* in which the judge or *judicial candidate* is running;

(d) identify himself or herself as a candidate of a *political organization*, including permitting the candidate's name to be listed on election materials along with the names of other candidates for elective public office and appearing in promotions of the ticket; and

(e) obtain and use publicly stated support from any person or organization, including a *political organization*.

## COMMENT

[1] Paragraphs (B), (C), and (D) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1(B).

[2] Despite paragraphs (B), (C), and (D), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (6).

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] In nonpartisan public elections or retention elections, paragraphs (B)(3) and (C)(3) prohibit a candidate from obtaining and using publicly stated support from a partisan political organization.

[5] A judge or judicial candidate subject to partisan public election is permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[6] For purposes of paragraph (D)(3)(c) candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

## RULE 4.3

### Activities of Candidates for Appointment to Judicial Office

(A) A candidate for appointment to judicial office may:

(1) communicate with the appointing authority, including any selection, screening, or nominating commission or similar agency; and

(2) seek endorsements for the appointment from any person or organization other than a partisan *political organization*.

(B) a nonjudge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by *law*:

(1) retain an office in a *political organization*,

(2) attend or purchase tickets for dinners or other events sponsored by a *political organization* or a candidate for public office, and

(3) solicit funds for, pay an assessment to, or make a *contribution* to a *political organization* or a candidate for public office.

## COMMENT

When seeking support or endorsement, or when communicating directly with an appointing authority, a candidate for appointment to judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(6).

## RULE 4.4

### Campaign Committees

(A) A *judicial candidate* for retention, nonpartisan, or partisan election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law. A judicial candidate may also *personally solicit* or accept campaign contributions.

(B) A *judicial candidate* for retention, nonpartisan, or partisan election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions as are permitted by law.

(2) not to solicit or accept contributions for a candidate's current campaign more than one year before the applicable primary election, caucus, or general or retention election, nor more than 90 days after the last election in which the candidate participated; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

## COMMENT

[1] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[2] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are permitted by law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

## RULE 4.5

### Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for election to a nonjudicial office either in a primary or in a general election or upon election or appointment to fill a vacancy in an elective nonjudicial office, a judge shall resign from judicial office.

(B) Upon becoming a candidate for appointment to a nonjudicial office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

#### COMMENT

[1] In campaigns for election to nonjudicial public offices, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for election to nonjudicial office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointment to nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

[3] A judge cannot hold judicial office while holding an elective nonjudicial office, whether the nonjudicial office is held by election or by appointment.

[**History:** New Code adopted effective March 1, 2009.]